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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VICTOR ROGER HERNANDEZ,

Petitioner,

v.

JAMES YATES, Warden,

Respondent.

C 08-1154 JF (PR)

**MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS
AS UNTIMELY**

California state prisoner Victor Roger Hernandez (“petitioner”) has filed a petition for writ of habeas corpus in this Court pursuant to 28 U.S.C. §§ 2241 & 2254(d). Respondent hereby moves this Court for an order dismissing the petition on the ground that it is untimely. *See* 28 U.S.C. § 2444(d)(1). A motion to dismiss in lieu of an answer on the merits is appropriate where the petition is procedurally defective. *See White v. Lewis*, 874 F.2d 599, 602 (9th Cir. 1989); *O’Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990); Rules Governing 28 U.S.C. § 2254 Cases, Rule 4 and Advisory Committee Notes. Respondent has not noticed this motion for hearing as petitioner is in custody and not represented by counsel.

PROCEDURAL HISTORY

On May 14, 1996, in Santa Clara County Superior Court, pursuant to a plea bargain, petitioner pleaded guilty to felony possession of PCP and misdemeanor under the influence of PCP, and admitted two “strike” prior convictions and three prior prison terms.^{1/} See Cal. Health & Safety Code §§ 11377(a), 11550(a); Cal. Penal Code §§ 667.5(b), 1170.12. On December 9, 1996, petitioner was sentenced to twenty-five years to life in prison. Exh. A; see Cal. Penal Code § 1170.12(c)(2)(A)(ii).

Petitioner directly appealed from his judgment with appointed counsel. Petitioner subsequently requested to abandon the appeal, however, before briefing. Exh. B. The court of appeal granted the request, and dismissed the direct appeal on April 8, 1997. Exh. B.

On January 27, 2004, petitioner filed a petition for writ of habeas corpus in Santa Clara County Superior Court. Exh. C. That court denied the petition on March 4, 2004. Exh. C.

On May 12, 2006, petitioner filed a second petition for writ of habeas corpus in Santa Clara County Superior Court. Exh. D. That court denied the petition, inter alia, as untimely, on July 5, 2006. Exh. D.

On August 11, 2006, petitioner filed a petition for writ of habeas corpus in the California Court of Appeal. Exh. E. That court denied the petition on September 1, 2006. Exh. E.

On September 22, 2006, petitioner filed a third petition for writ of habeas corpus in Santa Clara County Superior Court. Exh. F. That court denied the petition, inter alia, as untimely, on October 27, 2006. Exh. F.

On December 13, 2006, petitioner filed a second petition for writ of habeas corpus in the California Court of Appeal. Exh. G. That court denied the petition on January 5, 2007. Exh. G.

On February 6, 2007, petitioner filed a petition for writ of habeas corpus in the California Supreme Court. Exh. H. That court denied the petition as untimely on July 11, 2007. Exh. H (citing *In re Robbins*, 18 Cal. 4th 770, 780 (1998)).

On or after February 14, 2008 (signature date), petitioner constructively filed the instant

1. Petitioner has attached to his petition the transcript of the May 14, 1996, change of plea hearing. A transcript of the subsequent sentencing hearing accompanies this motion as exhibit A.

petition by delivering to prison authorities for mailing to this Court. *See* Petition at 7. The petition was filed in fact on February 27, 2008.

ARGUMENT

The petition was filed beyond the one-year statute of limitations. It must be dismissed.

Petitioner's 28 U.S.C. § 2254 petition is governed by the Antiterrorism and Effective Death Penalty Act of 1996, which imposes a one-year statute of limitations on the filing of federal habeas petitions. 28 U.S.C. § 2244(d)(1). Here, the limitations period commenced against petitioner on April 8, 1997, when the California Court of Appeal dismissed, on petitioner's request, his direct appeal.^{2/} Exh. B. The limitations period expired a year later, on April 8, 1998. As petitioner filed the instant petition in 2008, it is untimely by several years unless tolling applies.

Although petitioner commenced collateral review in state court in 2004 by filing a series of petitions, those filings did not toll the statute of limitations, as the limitations period had expired some six years earlier, on April 8, 1998. *See* 28 U.S.C. § 2244(d)(2); *Ferguson v. Palmateer*, 321 F.3d 820, 823 (9th Cir. 2003); Exhs. C-H. Specifically, petitioner allowed 2,485 days (4/08/97—1/27/04) of untolled time to pass before beginning to pursue his remedies in state court. *See* Exh. C-D. He allowed yet another 218 days (7/11/07—2/14/08) of untolled to pass following his completion of state collateral review. *See* Exh. H.

Although not necessary to a finding of untimeliness here, we nonetheless note that petitioner is not entitled to statutory tolling during the pendency of his second and third Alameda County Superior Court habeas petitions, Exhs. D, F, and California Supreme Court habeas petition, Exh. H. Those petitions were denied as untimely, and thus not "properly filed" for purposes of 28 U.S.C. § 2244(d)(2). *See Pace v. DiGuglielmo*, 544 U.S. 408 (2005); *Bonner v. Carey*, 425 F.3d 1145, 1148-49 (9th Cir. 2005), *amended* 439 F.3d 993 (9th Cir.), *cert. denied*, 127 S. Ct. 132 (2006); Exhs. D, Order at 2-3; F, Order at 2-3; H (citing *In re Robbins*, 18 Cal. 4th 770, 780 (1998)).

In summary, petitioner filed the instant petition *ten years* after the expiration of the statute of limitations. The petition accordingly must be dismissed with prejudice as untimely. *See* 28

2. As petitioner voluntarily dismissed his appeal, additional time for certiorari, review, or rehearing is not applicable.

1 U.S.C. § 2244(d)(1).

2 **CONCLUSION**

3 Accordingly, for the reasons stated, respondent respectfully requests that the petition for
4 writ of habeas corpus be dismissed with prejudice as untimely.

5 Dated: June 20, 2008

6 Respectfully submitted,

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12
13 /s/ Gregory A. Ott
14 GREGORY A. OTT
Deputy Attorney General
15 Attorneys for Respondent
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EXHIBIT A

1 TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
2 SIXTH APPELLATE DISTRICT

COPY

3
4 ---000---

5 THE PEOPLE OF THE STATE)
6 OF CALIFORNIA,)

7 PLAINTIFF-RESPONDENT,)

8 VS.)

9 VICTOR ROGER HERNANDEZ,)

10 DEFENDANT-APPELLANT,)

NO. H016298
SCC NO. 186850

11 ---000---

12 REPORTER'S TRANSCRIPT ON APPEAL
13 FROM THE JUDGMENT OF THE SUPERIOR COURT
14 OF THE STATE OF CALIFORNIA IN AND FOR
15 THE COUNTY OF SANTA CLARA
16 THE HONORABLE WILLIAM F. MARTIN, JUDGE
17
18 DECEMBER 9, 1996

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA CLARA

3 BEFORE THE HONORABLE WILLIAM F. MARTINE, JUDGE

4 DEPARTMENT 3

5 ---000---

6
7 THE PEOPLE OF THE STATE OF]
CALIFORNIA,]
8 PLAINTIFF,]

9 VS.]

10 VICTOR R. HERNANDEZ,]
DEFENDANT.]

CASE NO. 186850

11 SENTENCING

12 ---000---

13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 HELD ON DECEMBER 9, 1996

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21 A P P E A R A N C E S:

22 FOR THE PEOPLE: GEORGE CHADWICK, D.D.A.

23 FOR THE DEFENDANT: J.J. KAPP, D.P.D.

24 FOR ADULT PROBATION: JOHN HULL, APO

25 REPORTED BY: LEANNA JANE LANE, C.S.R.
26 CERTIFICATE NO. 3337
27
28

1 SAN JOSE, CALIFORNIA

DECEMBER 9, 1996

2

3

PROCEEDINGS:

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THE COURT: THIS IS THE MATTER OF THE PEOPLE OF
THE STATE OF CALIFORNIA VERSUS VICTOR HERNANDEZ. APPEARANCE
FOR MR. HERNANDEZ, PLEASE.

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MR. KAPP: J.J. KAPP FOR MR. HERNANDEZ, YOUR
HONOR. MR. HERNANDEZ IS PRESENT.

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THE COURT: AND IN CUSTODY. FOR THE PROSECUTION?

MR. CHADWICK: GEORGE CHADWICK.

THE COURT: AND FOR THE PROBATION DEPARTMENT?

MR. HULL: JOHN HULL, YOUR HONOR.

THE COURT: THANK YOU. THIS IS THE TIME AND PLACE
SET FOR SENTENCING. AND I KNOW WE HAVE CONTINUED THIS A
COUPLE TIMES, MR. HERNANDEZ, BECAUSE OF THE EXPOSURE IN
TERMS OF TIME IN PRISON THAT YOU FACE AND WE WANT TO BE
CAREFUL ABOUT THIS.

18

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20

21

I HAVE RECEIVED A MOTION OR A RESPONSE TO A MOTION
FILED BY THE PROSECUTION TODAY AND I'LL HAVE THAT FILED BY
THE CLERK. IT CITES A CASE CALLED CEPEDA. I'VE GOT A
TRANSCRIPT OF THE CHANGE OF PLEA.

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MR. KAPP, I WOULD LIKE TO HEAR YOUR THOUGHTS, SIR.

MR. KAPP: THANK YOU, YOUR HONOR.

MR. KAPP; INDICATING AT THE OUTSET THAT MR.
HERNANDEZ DOES NOT -- IS NOT MAKING A MOTION TO WITHDRAW HIS
PLEA AND DOES NOT INTEND TO DO SO, I FIRST WOULD REQUEST TO
THE COURT THAT THE COURT REDUCE THE CHARGE THAT MR.
HERNANDEZ CURRENTLY STANDS CONVICTED OF TO A MISDEMEANOR

1 PURSUANT TO SECTION 17 FOR THE REASONS STATED IN OUR PAPERS,
2 THE LENIENCY FACTORS AND REASONS STATED IN OUR REASONS FOR
3 DISMISSAL PURSUANT TO PENAL CODE SECTION 1385 WHICH THE
4 COURT HAD REVIEWED AT THE TIME OF THE CHANGE OF PLEA WHICH
5 WAS MAY 14TH I BELIEVE, IN THIS DEPARTMENT.

6 IN THE ALTERNATIVE TO THAT, I WOULD REQUEST THAT
7 THE COURT NOW CONSIDER THE ROMERO CASE, STRIKE ONE OF THE
8 1170.12 PRIORS FOR THE SAME REASONS, AND ALSO CONSIDER
9 LETTERS FROM MR. HERNANDEZ'S MOTHER WHICH I SUBMITTED TO THE
10 COURT ON OCTOBER 23RD, ONE DATED JUNE 6TH, 1996 AND A LETTER
11 FROM MR. HERNANDEZ'S SISTER OF THE SAME DATE, SUBMITTED ON
12 THE SAME DATE.

13 AND I WOULD ALSO REPRESENT TO THE COURT THAT THE
14 MORIAH HOUSE, THE RESIDENTIAL TREATMENT PROGRAM IN SAN MATEO
15 COUNTY -- WELL, IN MENLO PARK, I'M NOT SURE WHAT COUNTY THAT
16 IS -- HAS INDICATED TO ME THAT THEY WOULD ACCEPT MR.
17 HERNANDEZ IF HE WAS SOMEHOW AFFORDED THE OPPORTUNITY TO GO
18 TO THE PROGRAM.

19 AND I WOULD ONCE AGAIN POINT OUT THAT THE ONLY
20 VIOLENCE IN MR. HERNANDEZ'S ADMITTEDLY LONG HISTORY IS IN
21 THIS PARTICULAR CASE. THERE IS NO RECORD IN HIS CRIMINAL
22 HISTORY OF VIOLENCE AT ALL. CLEARLY, THIS CASE WAS A
23 FUNCTION OF MR. HERNANDEZ BEING UNDER THE INFLUENCE OF A
24 CONTROLLED SUBSTANCE WHICH OBVIOUSLY HE NEEDS TREATMENT FOR.

25 ALSO, I WOULD ASK THE COURT TO CONSIDER THAT MR.
26 HERNANDEZ WOULD WAIVE ALL PRE-SENTENCE CREDIT AND I BELIEVE
27 THAT IT IS IN THE INTERESTS OF JUSTICE FOR THE COURT TO
28 GRANT EITHER OF THESE TWO MOTIONS FOR THOSE REASONS.

1 THE COURT: MR. CHADWICK, YOUR THOUGHTS.

2 MR. CHADWICK: PEOPLE DISAGREE AND OBJECT, YOUR
3 HONOR, IN LIGHT OF THE DEFENDANT'S, AS MR. KAPP SAYS,
4 ADMITTEDLY LONG RECORD AND THE NEW OFFENSE IS FRIGHTENING
5 ENOUGH WHERE IN CONJUNCTION WITH HIS RECORD THE FULL
6 APPLICATION OF THE THREE STRIKES LAW UNDER THE REDUCED
7 CHARGES THE PEOPLE FEEL IS APPROPRIATE FOR THIS DEFENDANT.

8 THE COURT: MR. HULL?

9 MR. HULL: YOUR HONOR, I WOULD ENCOURAGE THE COURT
10 NOT TO STRIKE THE STRIKE OR REDUCE THIS CHARGE TO A
11 MISDEMEANOR. THE DEFENDANT WAS BROUGHT TO THE ATTENTION OF
12 THE AUTHORITIES WHEN HE ATTEMPTED TO PURSE SNATCH. IT'S
13 GOING TO BE DISMISSED. HE IS ALSO HAVING ANOTHER STRIKE
14 DISMISSED WHICH WOULD HAVE MADE THIS A FIFTY YEAR TO LIFE
15 AND I THINK HE IS RECEIVING THE BENEFIT OF A SHORTER
16 SENTENCE BY THAT.

17 THE COURT: ANYTHING ELSE, MR. KAPP, MR.
18 HERNANDEZ?

19 MR. KAPP: I DO. MR. HERNANDEZ'S MOTHER AND HIS
20 SISTER ARE PRESENT IF THE COURT HAS ANY QUESTIONS OF THEM.
21 OTHERWISE, I WOULD SUBMIT IT, YOUR HONOR.

22 THE COURT: I HAVE OF COURSE READ THE PROBATION
23 REPORT ACTUALLY A COUPLE TIMES. IT RECOMMENDS TWENTY-SEVEN
24 YEARS TO LIFE. I HAVE CONSIDERED THE PSYCHOLOGICAL
25 EVALUATION DATED JULY 25TH OF THIS YEAR FROM DOCTOR SANCHEZ,
26 THE LETTER FROM MR. HERNANDEZ'S SISTER WHICH I BELIEVE IS
27 DATED JUNE THE 6TH, THE LETTER FROM HIS MOTHER IS DATED JUNE
28 THE 12TH. I HAVE RECEIVED AND READ BOTH OF THOSE AND

1 THOUGHT ABOUT THEM.

2 I HAVE REREAD THE CHANGE OF PLEA WHERE OBVIOUSLY I
3 TOLD MR. HERNANDEZ QUITE CLEARLY THAT HE WAS LOOKING AT VERY
4 LIKELY A LIFE SENTENCE IN STATE PRISON. AND I JUST WANT TO
5 DOUBLE-CHECK HERE ON SOMETHING. YOU INDICATED, MR. KAPP,
6 THAT HE HAD NO PRIOR VIOLENCE AND I HAVE A QUESTION. THERE
7 IS A 261(2) CHARGE IN 1986. WAS THAT DISMISSED?

8 MR. KAPP: MY UNDERSTANDING, YOUR HONOR, IS THAT
9 THAT IS NOT A CONVICTION.

10 THE COURT: OKAY.

11 MR. HULL: MY RAP SHEET HAS CROSSED THAT OUT IN
12 LIGHT PENCIL. I DON'T KNOW IF IT WAS DISCOVERED EARLIER.
13 IT WAS DISMISSED.

14 THE COURT: OKAY. YOUR UNDERSTANDING IS THAT WAS
15 NOT A CONVICTION, MR. CHADWICK, IS THAT RIGHT, SIR?

16 MR. CHADWICK: THAT'S CORRECT, YOUR HONOR, IT
17 SHOWS UP IN THE CHARGES COLUMN BUT NOT IN THE DISPOSITION
18 COLUMN.

19 THE COURT: ALL RIGHT. THE STRIKES THAT MR.
20 HERNANDEZ ADMITTED WERE RESIDENTIAL BURGLARY STRIKES?

21 MR. KAPP: THAT'S RIGHT.

22 MR. CHADWICK: HE DOES HAVE AN INCIDENT OF
23 BATTERIES, AS A JUVENILE AND TWO ADULT ESCAPES. ONE OF THEM
24 I'M PRETTY SURE WAS NON VIOLENT. I DON'T KNOW IF THE OTHER
25 ONE WAS ACCOMPANIED BY VIOLENCE.

26 MR. KAPP: IF I CAN SPEAK TO THAT. I REVIEWED
27 DOCUMENTS, THE ONLY DOCUMENTS IN EXISTENCE ON BOTH THE
28 ESCAPES AND NEITHER ONE OF THEM HAD FORCE INVOLVED.

1 THE COURT: ALL RIGHT.

2 MR. KAPP; I REPRESENTED THAT TO THE DISTRICT
3 ATTORNEY'S THREE STRIKE COMMITTEE IN MY LETTER WHICH IS
4 ATTACHED TO THE BRIEF. I WOULD JUST POINT OUT FOR THE LAST
5 TIME THAT THE ORIGINAL STRIKE PRIOR IN THIS CASE IS TWENTY
6 YEARS OLD. I BELIEVE A TERM OF NINE YEARS HAD BEEN
7 DISCUSSED IN CHAMBERS. I STRONGLY FEEL THAT THAT WOULD BE
8 APPROPRIATE PUNISHMENT GIVEN ALL OF THE FACTORS THAT WE'VE
9 DISCUSSED.

10 THE COURT: ALL RIGHT. ANYTHING ELSE?

11 MR. HULL: I ONLY BROUGHT THAT UP BECAUSE THE
12 PROBATION REPORT DOESN'T FULLY COVER THE FACTS OF THE
13 ATTEMPTED ROBBERY SUFFICIENTLY AND I INQUIRED OF THE
14 DISTRICT ATTORNEY IN CHAMBERS AND HE ELABORATED THAT IT WAS
15 MUCH MORE SERIOUS THAN THE PROBATION REPORT INDICATES. SO I
16 WITHDRAW THAT SUGGESTION TO THE COURT OF NINE YEARS.

17 MR. KAPP: I'M NOT SAYING THAT THE PROBATION
18 DEPARTMENT SUGGESTED THAT. I AM SUGGESTING THAT AS AN
19 APPROPRIATE TERM CONSIDERING THE LACK OF VIOLENCE IN THE
20 PAST AND THE AGE OF THE PRIOR AND ALL THE OTHER THINGS THAT
21 I MENTIONED.

22 THE COURT: YOU WERE SUGGESTING THAT I STRIKE A
23 STRIKE AND GIVE YOUR CLIENT, IF I'M NOT WILLING TO REDUCE IT
24 TO A MISDEMEANOR, NINE YEARS AND HE WOULD WAIVE ALL HIS
25 CREDITS AND GIVE HIM SORT OF AN IN BETWEEN SENTENCE.
26 ANYTHING ELSE, MR. CHADWICK, FROM YOU, SIR?

27 MR. CHADWICK: YOUR HONOR, I JUST NOTICED FOR THE
28 FIRST TIME WHAT MR. HULL JUST SAID ABOUT THE APPROPRIATE

1 ACCOUNT OF THE EVENTS. IT BEARS LITTLE RESEMBLANCE TO WHAT
2 HAPPENED.

3 THE COURT: WHAT ACTUALLY DID HAPPEN?

4 MR. CHADWICK: THE PROBATION REPORT SAYS THE
5 DEFENDANT GRABBED HER PURSE AND AFTER SHE RECLAIMED THE BAG
6 THEN A STRUGGLE ENSUED. HE USED BOTH HANDS TO GRAB HER.

7 WHAT REALLY HAPPENED IS HE GRABBED THE DUFFEL BAG
8 FROM HER AFTER CUTTING HER OFF WITH HIS BICYCLE -- AND I'LL
9 TRY TO STATE THIS OBJECTIVELY. AND SHE WAS FRIGHTENED AND
10 SCREAMING AND THERE WAS A STRUGGLE AND SHE GOT HER DUFFEL
11 BAG BACK. SHE RAN SCREAMING PRETTY CLOSE TO THIS COURTHOUSE
12 DOWN THE STREET. HE RAN AFTER HER AND HE TACKLED HER FROM
13 BEHIND AFTER HAVING SAID, I LOVE YOU, I LOVE YOU, AND
14 BOUNCERS AT THE BAR CAME IN AND RESCUED HER.

15 ONE OF THEM TOLD ME AFTER THE PLEA THAT IT WAS
16 VERY CLEAR THAT HAD THEY NOT INTERVENED THE VIOLENCE WOULD
17 HAVE ESCALATED AFTER THAT, THAT IT WAS NOT A SITUATION WHERE
18 HE WAS GRABBING HER IN ORDER TO SUBDUE HER SO HE COULD THEN
19 GET THE DUFFEL BAG BACK. HE WAS GRABBING HER TO SUBDUE HER
20 AND CONTINUE TO DO SOMETHING VIOLENT TO HER.

21 INITIALLY, THERE WAS AN INDICATION THIS WAS SEXUAL
22 IN NATURE BUT THAT DIDN'T PAN OUT.

23 ONE OF THE WITNESSES SAID HE GRABBED HER BREAST
24 FROM BEHIND BUT I DON'T BELIEVE THAT THERE IS ANY SEX,
25 INTENTIONAL SEXUAL BATTERY UP TO THE POINT WHERE THE
26 BOUNCERS INTERVENED. HOWEVER, IT WAS A CHASE AND ATTACK AND
27 SHE WAS RESCUED BY TWO VERY LARGE BOUNCERS FROM THE NEARBY
28 NIGHTCLUB.

1 THE COURT: ALL RIGHT. ANYTHING ELSE, MR. KAPP?

2 MR. KAPP: I DID WANT TO POINT OUT THAT I
3 CONDUCTED A PRELIMINARY EXAMINATION IN THIS CASE AND THE
4 VICTIM MADE IT VERY CLEAR THAT AT LEAST IN HER MIND MR.
5 HERNANDEZ WAS NOT TRYING TO SEXUALLY ASSAULT HER.

6 I'M A LITTLE BIT CONCERNED ABOUT THE
7 APPROPRIATENESS OF A WITNESS' COMMENTS TO THE PROSECUTOR
8 AFTER THE PLEA AS EVIDENCE AT THE SENTENCING HEARING BUT I'M
9 NOT QUESTIONING THAT THEY WERE MADE. I JUST THINK THAT IT
10 WAS PRETTY CLEAR AT THE PRELIMINARY HEARING THAT GIVEN MR.
11 HERNANDEZ'S STATE OF INTOXICATION AS TESTIFIED TO BY ALL THE
12 WITNESSES, THAT IT WAS NOT CLEAR AT ALL WHAT MR. HERNANDEZ'S
13 MOTIVES WERE WITH RESPECT TO THE PURSE. THERE WERE COMMENTS
14 ABOUT HIM LOVING THE VICTIM. CLEARLY, HE WAS OUT OF IT AND
15 THAT'S WHY I THINK THIS IS A SITUATION THAT'S MITIGATED AND
16 WOULD REQUEST THE COURT CONSIDER THAT.

17 THE COURT: THANK YOU. I WILL CONSIDER YOUR
18 REQUEST, MR. KAPP, AS AN ALTERNATE MOTION TO EITHER REDUCE
19 THE CHARGE TO A MISDEMEANOR OR TO STRIKE A STRIKE SO THAT
20 ONLY ONE STRIKE WILL REMAIN.

21 I HAVE THE ISSUES CLEARLY IN MIND, I HAD THEM
22 CLEARLY IN MIND BEFORE WHEN I READ IT LAST TIME AND HAD THE
23 ABILITY TO PUT THINGS OUT OF MY MIND TEMPORARILY BUT IT'S
24 ALL THERE NOW.

25 I'M GOING TO DECLINE TO ENTERTAIN YOUR SUGGESTION
26 THAT I EITHER REDUCE THE CHARGE TO A MISDEMEANOR OR TO
27 STRIKE AN ADDITIONAL STRIKE FOR SEVERAL REASONS. I THINK I
28 OWE IT TO MR. HERNANDEZ TO EXPLAIN WHY.

1 OBVIOUSLY, MR. HERNANDEZ HAS GOT A LONG, LONG,
2 LONG RECORD INCLUDING MULTIPLE COMMITMENTS TO STATE PRISON
3 AND THE COMMON THREAD IS SUBSTANCE ABUSE THROUGHOUT MOST OF
4 THE RECORD.

5 I WANTED TO BE CLEAR AND IT IS CLEAR TO ME NOW
6 THAT THERE'S BEEN NO PRIOR VIOLENCE. THERE WAS VIOLENCE ON
7 THIS OCCASION AND THAT TROUBLES ME GREATLY. IT IS EXPLAINED
8 BY HIS BEING UNDER THE INFLUENCE BUT THAT EXPLAINS IT, IT
9 DOES NOT EXCUSE IT.

10 MY FEAR, HOWEVER, IS THAT MR. HERNANDEZ WHO IS,
11 GOSH, THIRTY-NINE, FORTY YEARS OLD NOW IS NOT PREPARED TO
12 DEAL WITH THE SUBSTANCE ABUSE PROBLEMS, THIS WAS PCP, AND
13 THAT A LONGER TERM IN STATE PRISON IS NECESSARY TO PROTECT
14 THE PUBLIC.

15 BOTTOM LINE, I THINK CANDIDLY IF THIS HAD BEEN A
16 MERE POSSESSION AND UNDER THE INFLUENCE CASE, I WOULD BE
17 THINKING ENTIRELY DIFFERENTLY, MR. HERNANDEZ, AND I WOULD
18 PROBABLY BE THINKING IN TERMS OF SOMEWHERE AROUND NINE OR
19 TEN YEARS. JUST LAST WEEK I DID THAT WITH ANOTHER YOUNG MAN
20 WHO WAS DOING VERY POORLY ON PAROLE AT THE TIME BUT WAS IN
21 POSSESSION OF A SMALL AMOUNT OF METHAMPHETAMINE, BUT I
22 STRUCK THE STRIKE AND GAVE HIM SEVEN YEARS IN STATE PRISON
23 AND HE WAIVED ALL OF HIS CREDIT FOR TIME SERVED.

24 AND HE HAD A TERRIBLE RECORD ALSO BUT NOT QUITE AS
25 LONG AS YOURS. BUT THAT WAS MERELY POSSESSION OF DRUGS AND
26 THERE WAS NO VIOLENCE, NO SEX, NOTHING INVOLVED. I'M NOT
27 SAYING THERE'S ANY SEX INVOLVED HERE BUT THERE WAS CERTAINLY
28 VIOLENCE AND POTENTIAL FOR GREAT HARM TO THE VICTIM EXCEPT

1 FOR THE INTERVENTION OF THE TWO CITIZENS.

2 SO ON BALANCE AND CONSIDERING THAT ANOTHER STRIKE
3 HAS ALREADY BEEN STRICKEN BY THE DISTRICT ATTORNEY IN THE
4 INTERESTS OF JUSTICE, I FEEL THAT IT IS FAIR AND JUST TO
5 IMPOSE A SENTENCE COMMENSURATE WITH THE THREE STRIKES LAW
6 AND I WILL GO FORWARD ON THAT BASIS NOW.

7 MR. KAPP: EXCUSE ME. YOU INDICATED THAT THE
8 PROSECUTION STRUCK ANOTHER STRIKE. THAT'S NOT EXACTLY -- I
9 DON'T THINK THAT'S EXACTLY ACCURATE. THEY DISMISSED THAT
10 COUNT WHICH ELIMINATED THE REQUIREMENTS OF THE CONSECUTIVE
11 TWENTY-FIVE TO LIFE SENTENCE.

12 THE COURT: YOU'RE RIGHT. I STAND CORRECTED.
13 THERE'S BEEN A BENEFIT OF THE BARGAIN IN THAT REGARD BETWEEN
14 THE DISTRICT ATTORNEY AND THE DEFENSE. THE PROSECUTOR GAVE
15 MR. HERNANDEZ THE BENEFIT OF SOME CONCERN AS TO HIS INTENT
16 ALTHOUGH FRANKLY IT SEEMED TO ME THAT IT WAS QUITE CLEAR
17 THAT HE WAS TRYING TO ROB, TAKE THE PROPERTY OF THE VICTIM.
18 IT WAS SOMEWHAT MORE AMBIGUOUS AS TO ANY OTHER STATEMENTS
19 THAT HE MIGHT HAVE BEEN MAKING. ALL THINGS CONSIDERED, MR.
20 HERNANDEZ, I WILL DENY YOUR REQUEST.

21 AS TO COUNT 3 WHICH IS THE POSSESSION CHARGE,
22 WHICH IS THE CHARGE THAT REMAINS, I WILL IMPOSE SENTENCE OF
23 TWENTY-FIVE YEARS TO LIFE AS REQUIRED BY THE THREE STRIKES
24 LAW. THERE ARE APPARENTLY TWO ADDITIONAL PRISON PRIORS THAT
25 ARE AVAILABLE TO THE COURT FOR ENHANCEMENT, AND AS TO THOSE,
26 I WILL STRIKE THE ADDITIONAL PUNISHMENT PURSUANT TO
27 1170.1(H).

28 SO INSTEAD OF TWENTY-SEVEN YEARS TO LIFE, I'M

1 GIVING YOU TWENTY-FIVE YEARS TO LIFE. THE REASON IS THAT
2 YOU SETTLED YOUR CASE FAIRLY EARLY BEFORE TRIAL. I'M ALSO
3 AWARE OF YOUR DOCTOR'S REPORT HERE AND I'M CONSIDERING THAT
4 AS A REASON FOR NOT IMPOSING THOSE TWO PRISON PRIORS.

5 TWO HUNDRED DOLLARS RESTITUTION FINE AS REQUIRED
6 BY LAW. I WILL SUSPEND ANOTHER TWO HUNDRED DOLLARS PURSUANT
7 TO 1202.45.

8 HE WILL BE ON PAROLE, MR. HULL, FOR?

9 MR. HULL: FIVE YEARS.

10 THE COURT: UP TO FIVE YEARS, SIR. I'M GOING TO
11 WAIVE THAT FEE, WAIVE THE BOOKING FEE BECAUSE YOU'RE GOING
12 TO PRISON.

13 AS TO COUNT 4, UNDER THE INFLUENCE, WHICH IS WHAT
14 GOT YOU INTO THIS WHOLE MESS, I WILL DENY PROBATION, GIVE
15 YOU THE NINETY DAYS MINIMUM AND RUN THAT CONCURRENT, OF
16 COURSE, AND WAIVE THE LAB FEE ON THAT.

17 HOW MANY PRISON PRIORS WERE THERE?

18 MR. HULL: THREE ADMITTED. WE RECOMMENDED TWO BUT
19 THERE'S A THIRD ONE.

20 THE COURT: I'M STRIKING ALL THREE PRISON PRIORS,
21 I'M STRIKING PUNISHMENT PURSUANT TO 1170.1(H) FOR THE
22 REASONS STATED.

23 UPDATED CREDIT FOR TIME SERVED?

24 MR. HULL: FOUR EIGHTY-FOUR PLUS TWO FORTY-TWO FOR
25 SEVEN HUNDRED AND TWENTY-SIX.

26 THE COURT: LET'S MAKE SURE THAT MR. HERNANDEZ
27 HEARD THAT.

28 MR. HULL: FOUR EIGHTY-FOUR ACTUAL, TWO HUNDRED

1 FORTY-TWO DAYS PURSUANT TO SECTION 4019, TOTAL OF SEVEN
2 HUNDRED AND TWENTY-SIX.

3 I'M SORRY TO SAY I HAVE TO DO THIS, I DON'T ENJOY
4 DOING THIS, BUT I THINK I NEED TO DO IT TO PROTECT THE
5 PUBLIC. YOU SEEM LIKE A NICE ENOUGH GUY WHEN YOU'RE NOT
6 USING DRUGS BUT I'M WORRIED ABOUT THE SAFETY OF THE PUBLIC.
7 ANYTHING ELSE, MR. KAPP?

8 MR. KAPP: I DON'T BELIEVE SO, YOUR HONOR.

9 THE COURT: MR. HERNANDEZ? NO. ALL RIGHT. MR.
10 CHADWICK?

11 MR. CHADWICK: SUBMITTED, YOUR HONOR.

12 THE COURT: THANK YOU.

13 * * *

14

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28

1 STATE OF CALIFORNIA)
2) SS.
3 COUNTY OF SANTA CLARA)
4
5
6

7 I, LEANNA J. LANE, DO HEREBY CERTIFY THAT THE
8 FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE
9 PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON
10 DECEMBER 9, 1996.

11 THAT, I REPORTED THE SAME IN STENOGRAPHY BEING THE
12 QUALIFIED AND ACTING OFFICIAL COURT REPORTER OF THE SUPERIOR
13 COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF
14 SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER HAD THE
15 SAME TRANSCRIBED INTO TYPEWRITING AS HEREIN APPEARS.

16 DATED THIS 7TH DAY OF JANUARY, 1997.
17
18
19

20 LEANNA J. LANE, C.S.R.
21 CERTIFICATE NO. 3337
22
23
24
25
26
27
28

EXHIBIT B

CALIFORNIA APPELLATE COURTS

Case Information



Welcome

6th Appellate District

Change court



Search

Court data last updated: 06/06/2008 04:05 PM

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Case Summary Docket Scheduled Actions Briefs
Disposition Parties and Attorneys Trial Court

Calendar

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Options

Docket (Register of Actions)

The People v Hernandez
Case Number H016298



Date	Description	Notes
12/27/1996	Notice of appeal lodged/received (criminal).	Noa Filed 12/9/96
12/27/1996	Notice of appeal lodged/received (criminal).	Noa Filed 12/17/96
12/27/1996	Counsel appointment order filed.	
01/06/1997	Telephone conversation with:	Ctr Lane Will Turn Tx In Tomorrow
01/08/1997	Telephone conversation with:	Laura; Ctr Lane Has Turned In Tx
01/09/1997	Record on appeal filed.	C-1, R-2
01/09/1997	Probation report filed.	Prc-1
01/22/1997	Recommendation of counsel by SDAP filed.	Bojarski, Jill
02/18/1997	Requested - extension of time	From Atty Bojarski (1) 2 & Including 3/20/97 **Granted With No Further Rex***
03/18/1997	Requested - extension of time	From Atty Bojarski (2) 2 & Including 4/19/97 **Tct**
03/19/1997	Granted - extension of time.	Time To File Aob Is Extended To 4/19/97 With No Further Rex
04/07/1997	Request for dismissal filed.	By Appellant
04/08/1997	Dismissal order filed.	At Request Of Appellant
04/08/1997	Remittitur issued.	
10/21/1997	Case complete.	
08/04/1999	Shipped to state retention center, box # / list #:	40/64

[Click here](#) to request automatic e-mail notifications about this case.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

FILED

APR - 8 1997

Court of Appeal - Sixth App. Dist.
MICHAEL J. YERLY, Clerk

BY _____
DEPUTY

PEOPLE OF THE STATE OF CALIFORNIA
vs.
HERNANDEZ, VICTOR
HO16298
Santa Clara County No. 186850

BY THE COURT:

Pursuant to the request of appellant, the appeal filed on
December 17, 1996 is dismissed. The remittitur shall issue
forthwith.

Dated: _____
APR - 8 1997

GOTTLIE, P.J.

P.J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

COPY

Office of the Attorney General
50 Fremont St. Suite 300

San Francisco, CA 94105

PEOPLE OF THE STATE OF CALIFORNIA
vs.
HERNANDEZ, VICTOR
HO16298
Santa Clara County No. 186850

DOCKET
ADM-37
CIV-37
CR-37
Entered by <i>7</i>
Date <i>4/10/97</i>

97DA0059

* * REMITTITUR * *

I, MICHAEL J. YERLY, Clerk of the Court of Appeal of the State of California, for the Sixth Appellate District, do hereby certify that the opinion or decision entered in the above-entitled cause on *APR - 8 1997* has now become final.

☐ Appellant ☐ Respondent to recover costs
☐ Each party to bear own costs
☒ Costs are not awarded in this proceeding
☐ See decision for costs determination

Witness my hand and the seal of the Court
affixed at my office *APR - 8 1997*



MICHAEL J. YERLY, Clerk

By:

E. CAPOZZI

Deputy

COPY

JILL M. BOJARSKI
ATTORNEY AT LAW

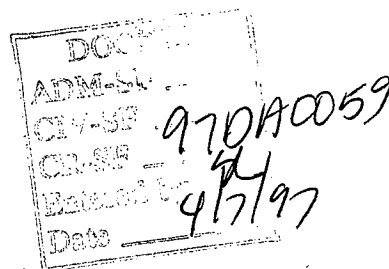
REDSTONE PLAZA
1300 DOVE STREET, SUITE 200
NEWPORT BEACH, CALIFORNIA 92660-2416

TELEPHONE: (714) 474-9900
FAX: (714) 474-9906

April 3, 1997

Clerk of the Court of Appeal
Sixth Appellate District
333 W. Santa Clara Street, Suite 1060
San Jose, California 95113

Re: **People v. Victor Hernandez**
Court of Appeal No. H016298A1
Santa Clara County No. 186850



Dear Sir or Madam:

Enclosed is a request for abandonment of the above-entitled appeal, executed by Mr. Hernandez. We request that the court dismiss the appeal and issue the remittitur forthwith.

Sincerely,

Jill M. Bojarski
Attorney for Victor Hernandez

Enc.

c: Victor Hernandez
SDAP
Attorney General

cc: [illegible]

[illegible text]

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Respondent,)

v.)

VICTOR HERNANDEZ.)

Appellant.)

Court of Appeal
No. H016298A1
Superior Court
No. 186850
(Santa Clara)

ABANDONMENT OF APPEAL

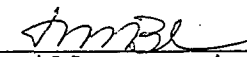
I, Victor Hernandez, appellant in the above-entitled matter, hereby abandon my appeal pursuant to rule 38 of the California Rules of Court. I have had to opportunity to discuss the case and the abandonment with my attorney and I am making this decision voluntarily. I understand the consequences of abandoning my appeal at this time.

Also pursuant to rule 38, I request that the court issue the remittitur immediately.

Dated: 3-22-92


VICTOR HERNANDEZ

Approved:


Jill M. Bojarski
Attorney for Appellant
1300 Dove St., Suite 200
Newport Beach, CA 92660
(714) 474-9900
State Bar No. 100334

PROOF OF SERVICE

The undersigned declares:

I am over the age of 18 years and not a party to the within action. My business address is 1300 Dove Street, Suite 200, Newport Beach, California 92660-2416.

On April 3, 1997, I served the attached document on the interested parties, addressed as follows, by placing a copy in a separate sealed envelope with first-class postage pre-paid thereon and depositing the same in the United States mail, as described below, at Newport Beach, California.

Office of the Attorney General
50 Fremont Street, Suite 300
San Francisco, CA 94105-2339

Sixth District Appellate Program
100 N. Winchester Blvd., Suite 310
Santa Clara, California 95050

Victor Hernández #K-31659
High Desert State Prison
PO Box 3030
Susanville, CA 96130

I am readily familiar with this office's practice of collecting and processing correspondence for mailing. Under that practice, it is deposited in the United States mail on the same day that I place it into the office's mail collection depository, in the ordinary course of business. I am aware that service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date shown herein as the date of mailing.

I declare under penalty of perjury that the foregoing is true and correct.
Executed April 3, 1997, at Newport Beach, California.

JILL M. BOJARSKI

EXHIBIT C

FILED

MAR 04 2004

KIRI TORRE
Chief Executive Officer
Superior Court of Santa Clara County
BY [Signature] DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re

VICTOR HERNANDEZ,

On Habeas Corpus

No.: 186850

ORDER

VICTOR HERNANDEZ (hereinafter Petitioner) filed a Petition for Writ of Habeas Corpus alleging ineffective assistance of counsel during the plea and sentencing process. In 1995, Petitioner plead guilty to violations of Penal Code §§ 11377 (felony possession of drugs) and 11550 (misdemeanor being under the influence of drugs). Petitioner also admitted to two strikes and three prior prison terms. Petitioner's attorney allegedly advised him that Petitioner would receive a nine year sentence and one of his felony convictions

1 would be reduced to a misdemeanor in exchange for a plea of guilty.
2 In May 1996, Petitioner plead guilty. During his plea hearing,
3 Petitioner was advised that the minimum possible sentence was 25
4 years to life and could be possibly more depending on what his
5 probation report found. In December 1996, Petitioner was sentenced
6 to 25 years to life for the felony possession of drugs violation,
7 and 90 days for the misdemeanor under the influence violation to run
8 concurrently with the 25 years to life sentence. In 1997,
9 Petitioner voluntarily dismissed his appeal pending in the Sixth
10 District Court of Appeal.
11

12 Based on the record and transcripts from Petitioner's plea
13 hearing on May 14, 1996 and sentencing hearing on December 9, 1996,
14 Petitioner's claim that his attorney provided him deficient counsel
15 because of the alleged misadvice regarding his potential sentence,
16 fails.
17

18 A defendant has a Sixth Amendment right to effective assistance of
19 counsel in a criminal trial. (*People v. Ledesma* (1987) 43 Cal.3d
20 171, 215 [Under both the United States and California
21 constitutions].) To be successful on a motion for ineffective
22 assistance of counsel, Petitioner must make a showing, first, that
23 the errors committed by his attorney "fell below an objective
24 standard of reasonableness ... under prevailing professional norms."
25 (*Strickland v. Washington* (1984) 466 U.S. 668, 688.) Second,
26 Petitioner must show a "reasonable possibility that, but for
27
28

1 counsel's unprofessional errors, the result of the proceeding would
2 have been different. A reasonable probability is a probability
3 sufficient to undermine confidence in the outcome." (*Id.* at 693-694.
4 See also *Ledesma, supra*, at p. 215-218.)

5
6 The first prong is met if counsel's performance fell below an
7 objective standard of reasonableness under the prevailing norms of
8 practice. (*In re Alvernaz* (1992) 2 Cal.4th 924, 937.) The defendant
9 must then establish prejudice. Such prejudice must be affirmatively
10 proved by a preponderance of the evidence. (*Ledesma, supra*, at p.
11 217.) The burden of proving a claim of inadequate trial assistance
12 rests upon the petitioner. (*People v. Madaris* (1981) 122 Cal.App.3d
13 234, 241 [disapproved on other grounds in *People v. Barrick* (1982) 33
14 Cal.3d. 115].)

15
16 • The only evidence Petitioner offers to support his contention of
17 ineffective assistance of trial counsel is his uncorroborated
18 declaration that counsel wrongly advised him that he would receive a
19 nine year sentence. This self serving declaration is unpersuasive.
20 (See generally *In re Alvarnaz, supra*, at p. 938, "a defendant's self-
21 serving statement after conviction, and sentence, is insufficient in
22 and of itself to sustain the defendant's burden of proof as to
23 prejudice, and must be corroborated independently by objective
24 evidence. A contrary holding would lead to an unchecked flow of
25 easily fabricated claims."] See also *People v. Barella* (1999) 20
26 Cal.4th 261, 272, in which the Court rejects as insufficient
27
28

1 "defendant's bare assertion.")

2 As such, this court has reviewed the record and the transcripts
3 of the May 14, 1996 plea hearing and December 9, 1996 sentencing.
4 From the facts, it appears that Petitioner's claim of ineffective
5 assistance of trial counsel is without merit.

6
7 During Petitioner's plea hearing in May 1996, the judge repeatedly
8 informed Petitioner that his sentence would be, at a minimum, 25
9 years to life (TX 05/14/96 3:4-7, 3:15-19, 3:25-28. 4:14-15, 4:23-24,
10 9:20-28, 10:2-4.) The judge further advised Petitioner, that
11 depending on what his probation report concludes, he may be facing up
12 to 28 years to life. (TX 05/14/96 3:25-28, 9:25-28.) The court also
13 repeatedly asked the Petitioner if he understood the plea agreement
14 and the resulting sentencing. (TX 05/14/96 4:2-4, 4:28-5:21, 9:20-
15 10:4.) To each of his questions, Petitioner responded that he
16 understood. (*Ibid.*) The judge also asked Petitioner whether anyone
17 had promised Petitioner anything else. (TX 05/14/96 4:5-7.)
18 Petitioner responded no. (*Ibid.*) During the plea hearing the judge
19 stated:
20

21 THE COURT: And I am also required to tell you the maximum
22 punishment you could receive under this settlement. You
23 must receive twenty-five years to life because of the two
24 strikes that you will be admitting here today after the
25 conviction of the felony possession charge and you could
26 received an additional three years for one -- for each of
the three prison priors that you will be admitting for a
maximum of up to twenty-eight years to life. Do you
understand the theoretical maximum?

27 THE DEFENDANT: Yes, sir.
28

1 THE COURT: Understand the minimum of twenty-five years to
2 life?

3 THE DEFENDANT: Yes, sir.

4 (TX 05/14/96 9:20-10:4.) The judge further asked Petitioner:

5 THE COURT: Now, Mr. Hernandez, do you have any questions of
6 anyone here, including your lawyer, as to the settlement of
7 the case, terms and conditions of the settlement or any of
8 your rights? Do you have any questions?

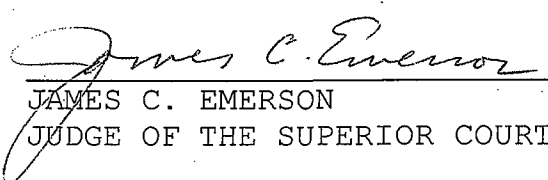
9 THE DEFENDANT: No.

10 (TX 05/14/96 18:26-19:2.) The judge questioned Petitioner as to
11 whether his attorney had explained the situation to him. (TX
12 05/14/96 7:24-8:10.) Petitioner responded in the affirmative. (Ibid.)
13 The judge asked the Petitioner: "Are you satisfied with [your
14 attorney's] legal advice?" (TX 05/14/96 8:11-13.) To which Petitioner
15 answered: "Yes." (Ibid.)

16 It is clear from the record that Petitioner was aware of the
17 potential sentence prior to his guilty plea. His self-serving
18 statement that his trial attorney misadvised him is without support.
19

20 For the above reasons, the petition is DENIED.

21
22
23 DATED: March 2, 2004


JAMES C. EMERSON
JUDGE OF THE SUPERIOR COURT

24
25 cc: Petitioner
26 District Attorney
27 Research
28 CJIC

MC-275

Name VICTOR, ROGEL HERNANDEZAddress HIGH DESERT STATE PRISONP.O. Box 3030 SUSANVILLE CA. 96127FAC. D-BUILDING - D-4-121 LOWCDC or ID Number K-311659**FILED**

JAN 27 2004

SANTA CLARA COUNTYKIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY [Signature] DEPUTY
S. CHUA

(Court)

VICTOR HERNANDEZ

Petitioner

vs.

PETITION FOR WRIT OF HABEAS CORPUS

No. 18685D

(To be supplied by the Clerk of the Court)

Respondent

INSTRUCTIONS — READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

Page one of six

This petition concerns:

- ☐ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

1. Your name: VICTOR, ROGER, HERNANDEZ
 2. Where are you incarcerated? HIGH DESERT STATE PRISON
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Petty with prior, FELONY OF POSSESSION OF A controlled substance,
BEING UNDER THE INFLUENCE OF controlled substance

- b. Penal or other code sections: 6666, 11377(A) 11550(A) 1170.12.

- c. Name and location of sentencing or committing court: SANTA CLARA COUNTY
SUPERIOR COURT

- d. Case number: 186850

- e. Date convicted or committed: 8-13-95

- f. Date sentenced: 12-09-96

- g. Length of sentence: 25 to Life

- h. When do you expect to be released? 2018

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

4. What was the LAST plea you entered? (check one)

☐ Not guilty
 ☒ Guilty
 ☐ Nolo Contendere
 ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury
 ☐ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial

GROUND'S FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

I WAS told AT sentencing That I would receive a term
 OF 9 years for all charges AND this was stated ON my
 transcripts.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

~~DEPOSE~~ ON DECEMBER 9, 1996 SENTENCE WAS IMPOSED AGAINST
 ME ON A Plea bargaining Agreement, IN WHICH I WAS ~~BE~~ UNDER
 THE WRONGFUL ADVICE OF MY ATTORNEY THAT HE REASSURED ME I
 WAS TO RECEIVE 9 years UPON ENTERING A Plea OF Guilty AND THAT
 THE JUDGE WOULD REDUCE ONE OF MY felony charges TO A misdemeanor
 OR TO STRIKE ONE OF MY priors AND THAT I WOULD RECEIVE 9 years AFTER
 I PLEADED Guilty SO UNDER THE ADVICE OF MY ATTORNEY I PLEADED Guilty
 TO ONE count OF simple possession OF PCP AND A misdemeanor under
 THE INFLUENCE THE PROSECUTION DISMISSED A Robbery AND THE petty WITH A
 Prior I ALSO admitted THE "strike" priors and prison priors. Before THE change
 OF MY plea MY ATTORNEY moved FOR a misdemeanor OF THE possession AND FOR THE court TO
 DISMISS A "strike" prior. Judge MARTIN denied THE motion (pre-Romero) stating THAT he
 assumed he had THE Power TO dismiss THE strike ON 12/09/96 AFTER RENEWING 1385 AND
 7 motions (denied) I WAS GIVEN A Three strikes sentence OF 25 TO LIFE, INSTEAD OF THE 9 years

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

P.D. JJ, KAPP

7. Ground 2 or Ground _____ (if applicable):

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

b. Result: DISMISSED.

c. Date of decision: APR-8-1997

d. Case number or citation of opinion, if known: 186850

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

JILL M. BOJARSKI 17592 IRVINE Blvd. Suite 128 TUSTIN CA. 92780-3125

9. Did you seek review in the California Supreme Court? ☒ Yes. ☐ No. If yes, give the following information:

a. Result: Abandonment

b. Date of decision: APR-8-1997

c. Case number or citation of opinion, if known: 186850

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

1. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

b. Did you seek the highest level of administrative review available? ☒ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed ☐ other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

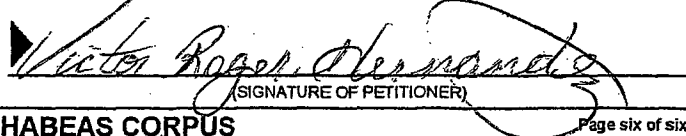
16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 1-20-04


(SIGNATURE OF PETITIONER)

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. Sec. 1746)

FILED

JAN 27 2004

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY [Signature] DEPUTY
B. CHUA

I hereby certify that I am a party, not related to this action, but I am a prisoner in the California Department of Corrections at:

HIGH DESERT STATE PRISON Prison
in the county of SUSANVILLE CA.

State of California. My prison address is: P.O. Box 3030 SUSANVILLE
CA 96127-3030

On 1-20-04

I served the attached: Habeas corpus Petition for
VICTOR, Roger, HERNANDEZ, CDC # K-31659

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

[Signature]

Superior court of
California county of
Santa Clara Hall of

Justice, 190 West Hedding Street SAN JOSE CA. 95110-1774

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Signed Charles Hastings

Date 1-20-04

EXHIBIT D

FILED

JUL 05 2006

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re) No. 186850
VICTOR HERNANDEZ) Order
On Habeas Corpus)

VICTOR HERANDEZ ("Petitioner") has filed another petition for a writ of habeas corpus. Petitioner alleges in the present petition that he is being denied prison credits in violation of his plea bargain and requests to withdraw his plea.

There is a bar against successive attacks on one's conviction by means of a petition for habeas corpus relief:

It has long been the rule that absent a change in the applicable law or the facts, the court will not consider repeated applications for habeas corpus considering claims previously rejected. [citations] The court has also refused to consider newly presented grounds for relief which were known to the petitioner at the time of a prior collateral attack on the judgment. [citation] The rule was stated clearly in In re Connor, supra, 16 Cal.2d 701, 705: "In this state a defendant is not permitted to try out his contentions piecemeal by successive proceedings attacking the validity of the judgment against him." (In re Clark (1993) 5 Cal.4th 750, 767-768.)

Past California decisions have suggested "that the rules against piecemeal presentation of claims and repetitious petitions are subject to undefined exceptions and that the court may be willing to entertain multiple collateral attacks on a judgment notwithstanding the potential for

1 abusive writ practice." (Id. at 768.) The Clark court found that it was "not persuaded that either
2 [Pen. Code] section 1475 or sound policy mandates or warrants consideration of unjustified
3 successive collateral attacks on a judgment of conviction." (Id. at 769.) Thus, the court
4 concluded that "such petitions may and should be denied." (Id. at 770.) "Before a successive
5 petition will be entertained on its merits the petitioner must explain and justify the failure to
6 present claims in a timely manner in his prior petition or petitions." (Id. at 774.)

7 "A litigant mounting a collateral challenge to a final criminal judgment [must] do so in a
8 timely fashion. By requiring that such challenges be made reasonably promptly, we vindicate
9 society's interest in the finality of its criminal judgments, as well as the public's interest "in the
10 orderly and reasonably prompt implementation of its laws." [citation omitted.] Such timeliness
11 rules serve other salutary interests as well. Requiring a prisoner to file his or her challenge
12 promptly helps ensure that possibly vital evidence will not be lost through the passage of time or
13 the fading of memories. In addition, we cannot overestimate the value of the psychological
14 repose that may come for the victim, or the surviving family and friends of the victim, generated
15 by the knowledge the ordeal is finally over. Accordingly, we enforce time limits on the filing of
16 petitions for writs of habeas corpus in noncapital cases (see, e.g., In re Swain (1949) 34 Cal. 2d
17 300, 304)... ." (In re Sanders (1999) 21 Cal. 4th 697, 703.)

18 In the present case, petitioner previously filed a habeas petition in March 2004
19 challenging his 1995 plea. Petitioner alleged he had been misadvised as to the length of his
20 sentence by his attorney and wanted to withdraw his plea. The petition was denied where the
21 plea transcripts clearly showed defendant was told he could receive 25 years to life. At no point
22 in the habeas petition to withdraw his plea did petitioner challenge his eligibility for prison
23 credits. Petitioner cannot do so now. Not only is the present petition an impermissible
24 successive attack, but it is also untimely as it is being brought over 11 years since his plea.
25 Petitioner however fails to give any explanation as to why the claim was not brought previously.

1 There is no showing that petitioner was only recently informed that he would not receive prison
2 credits.

3 Accordingly, the petition is DENIED.

4
5 Date:

5 Jul 2006



6 
7 PAUL BERNAL
8 JUDGE OF THE SUPERIOR COURT

9 Cc: Petitioner's Attorney
10 District Attorney
11 Research
12 CJIC
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24
25

MC-275

Name Victor Hernandez

Address P.V.S.P. Fac D-3-128-L

P.O. Box 8504

Coalinga Ca 93210

CDC or ID Number K-31659

FILED

MAY 12 2006

COUNTY OF SANTA CLARA

IN AND FOR THE STATE OF CALIFORNIA

(Court)

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
By S. Chua Deputy

VICTOR Hernandez

Petitioner

vs.

PETITION FOR WRIT OF HABEAS CORPUS

No.

186850
(To be supplied by the Clerk of the Court)

Respondent James Yates Warden**INSTRUCTIONS — READ CAREFULLY**

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

Read the entire form *before* answering any questions.

This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.

Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."

If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.

If you are filing this petition in the Court of Appeal, file the original and four copies.

If you are filing this petition in the California Supreme Court, file the original and thirteen copies.

Notify the Clerk of the Court in writing if you change your address after filing your petition.

In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished Supreme Court and Court of Appeal.

Page one of six

This petition concerns:

- ☐ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify):

Victor Hernandez

Your name:

P.V.S.P.

Where are you incarcerated?

 Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Possession of PCP/ Under the Influence

- b. Penal or other code sections: P.C. 11377(A) P.C. 1170.12

- c. Name and location of sentencing or committing court: Santa Clara Superior Court

- d. Case number: Case 186850

- e. Date convicted or committed: May 14, 1996

- f. Date sentenced:

- g. Length of sentence: .25 years to life

- h. When do you expect to be released?

 Were you represented by counsel in the trial court? ☐ Yes. ☐ No. If yes, state the attorney's name and address:

Santa Clara Public Defenders Office J.J. Kapp

What was the LAST plea you entered? (check one)

- ☐ Not guilty
 ☒ Guilty
 ☐ Nolo Contendere
 ☐ Other:

you pleaded not guilty, what kind of trial did you have?

- ☐ Jury
 ☐ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

SEE ATTACHED MEMORANDUM

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

SEE ATTACHED MEMORANDUM

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☐ No. ☒ If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

Did you seek review in the California Supreme Court? ☐ Yes. ☐ No. If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

i. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

j. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

3. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

Was advised by institutional records that I was not able to

earn good time work time credits as promised as a condition of my guilty plea.

Are you presently represented by counsel? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☐ No. If yes, explain:

If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

5-10-06


(SIGNATURE OF PETITIONER)

Victor Hernandez K-31659
P.V.S.P. Fac L-128-L
P.O. Box 8504
Coalinga Ca 93210

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

1			
2			
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4			
5			
6	VICTOR ROGER HERNANDEZ)	CASE NO. <u>186850</u>
7	PETITIONER:)	
8	V.)	PETITION FOR WRIT OF HABEAS
9	THE PEOPLE OF THE STATE OF)	CORPUS.
10	CALIFORNIA.)	
11	RESPONDENT.)	

MEMORANDUM OF POINTS AND AUTHORITIES

BY PETITIONER IN PRO. PER
VICTOR ROGER HERNANDEZ

VICTOR ROGER HERNANDEZ K-31659
P.V.S.P. Fac D-5-130-L
P.O. Box 8504
Coalinga Ca 93210

IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

In re Victor Roger Hernandez
on habeas corpus / PETITION FOR WRIT OF Habeas
Corpus.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION.

To; The Honorable Judge Presiding Judge.

TO: THE DISTRICT ATTORNEY IN AND FOR THE COUNTY OF SANTA CLARA.

Comes Now petitioner and defendant Victor Hernandez whom urges this court to grant an informal order to show cause on the grounds that his criminal sentence is in violation of clearly established State and Federal law.

The petitioner urges that he was induced to take a guilty plea with knowingly false and incorrect information provided by his trial counsel and the Judge and prosecutor. The prosecution intentionally remained silent when the Judge as a condition of petitioner's guilty plea was advised that he would only have to serve twenty years and would be eligible for good time and work time credits.

STATEMENT OF THE CASE

On May 14, 1996 the petitioner was sentenced to a California prison term of twenty five years to life under the Three Strikes law and the court went through a series of advisements to petitioner.

1 (SEE EXHIBIT "A" SENTENCING TRANS P-13 L-18-28)

2 THE COURT;

3 WELL YOU'RE ENTITLED TO CREDIT FOR TIME SERVED HERE SINCE
4 YOU WERE ARRESTED ACCORDING TO THE LAW AND YOU WILL BE
5 ELIGIBLE POSSIBILTY DEPENDING ON WHERE YOU ARE HOUSED IN
6 THE STATE DEPARTMENT OF CORRECTIONS FOR GOOD TIME AND WORK
TIME CREDITS. But because of the Three Strikes law you don't
GET FIFTY PERCENT OFF YOU ONLY GET TWENTY PERCENT OFF. Do
you understand?

7 Defendant: Yes

8 THE COURT:

9 THE COURT CAN'T PROMISE WHERE YOU ARE GOING TO BE HOUSED
10 UP THERE AND IF YOU REFUSE TO WORK OR FOLLOW THE RULES THEN
11 THE'll take that away and you'll do the entire amount. Do
YOU UNDERSTAND.

12 DEFENDANT Yes

13
14 The petitioner urges that he would not have entered a plea of
15 guilty if he was not going to get five years off for good time work
16 time credits. All state prisoner's are afforded the oppertunity to
17 earn work time credits. The petitioner urges that the totality in all
18 of the courts VOIR DIRE advisements that make the good time credits
19 part of the contract.

ARGUMENT

20
21 CRIMINAL LAW 159:

22 While no bargain or agreement can divest the court of its
23 sentencing discretion it inherently possesses, a Judge who has
24 accepted a plea bargain, is bound to impose a sentence within
25 the limits of the bargain. A plea bargain agreement is in sum
26 and essence a contract between the defendant and the prosecutor
27 to which the court consents to be bound. Should the court
28 consider the plea bargain to be unacceptable its remedy is to
reject it not violate it directly or indirectly.

Clearly the prosecutor was aware of the law at the time of the

1 Sentencing hearing and could have objected to the court making the
2 ability to earn twenty percent work and conduct credits an element
3 of the plea agreement.

4 The petitioner contends that the United States Constitution
5 insures that Boykin/Tahl rights holds convictions based on a plea
6 of guilty must also be supported by a record of the plea that
7 contains evidence that accused was advised of the right to a jury
8 trial, to confront witnesses, and against self incrimination and that
9 a knowingly and intelligent waiver of those rights. The record must
10 also show that the defendant knew both the nature of the charge and
11 and the consequences of entering a plea of guilty. Boykin V. Alabama
12 (1969) 395 U.S 238 23 L Ed.; In re Tahl (1969) 1 C3d 122, 132 81 CR
13 577, 581; People V. Sumstine (1984).

14 As in People V. Bonwit 219 Cal Rptr 297 stated one of the many
15 representations made to the petitioner was the courts own improper
16 and illusory idea that any California State prison could give out
17 twenty percent good time work time credits. See also People V DeVaughn
18 135 Cal Rptr 786 holding power beyond the authority of the trial court
19 improperly induced petitioner's guilty plea. Guilty plea must be
20 reversed because defendants were induced by misrepresentations.

21 A defendant sentenced with two or more prior strikes receives
22 no good time work time credits. (See In re Cervera (2001) 24 (4th)
23 1073, 103 CR2d 762.

24 Petitioner urges that he would not have taken a plea and would
25 have went to trial had he been aware that he would have to serve 25
26 years before the parole board could even consider him for parole.

27 A review of the law makes it clear that a defendant serving a
28

1 prison sentence under the California Three Strikes Law for his
2 third strike has been deemed not to be lawfully authorized to
3 earn good time work time credits.

4 The petitioner has worked on a prison job in a good time
5 earning capacity for the last ten years. (See Exhibit "B" petitioner's
6 declaration.

7 PETITIONER IS UNABLE TO PRESENT DEFENSE WITNESSES
8 FOR A NEW TRIAL AND IS PLACED AT A DISADVANTAGE

9 The petitioner urges that he is now placed at a disadvantage
10 because the prosecutor and his trial counsel allowed the trial court
11 to improperly advise the petitioner of conditions of his contract
12 guilty plea which were clearly illusory.

13 The petitioner contends that this Constitutional error was the
14 cause of the State of claimed misrepresentation made to the petitione

15
16 PRAYER FOR RELIEF

17 Petitioner prays the court grant his petition for writ of
18 Habeas Corpus on the grounds that the trial court mislead and advised
19 the petitioner of time credits which he was not entitled to obtain
20 as a condition of his contract agreement with the court.

21
22 Petitioner urges he would not have gave up his right to self
23 incrimination if he had known that he could not earn good time work
24 time credits.

25 Victor Roger Hernandez

26 *Victor Roger Hernandez*
27
28

EXHIBIT "A"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE WILLIAM F. MARTIN, JUDGE

DEPARTMENT 3

---000---

COPY

THE PEOPLE OF THE STATE OF
CALIFORNIA,

PLAINTIFF,

VS.

VICTOR ROGER HERNANDEZ,
DEFENDANT.

CASE NO. 186850

CHANGE OF PLEA

---000---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HELD ON MAY 14, 1996

A P P E A R A N C E S:

FOR THE PEOPLE:

GEORGE CHADWICK, D.D.A.

FOR THE DEFENDANT:

J.J. KAPP, D.P.D.

REPORTED BY:

LEANNA JANE LANE, C.S.R.
CERTIFICATE NO. 3337

1 SAN JOSE, CALIFORNIA

MAY 14, 1996

2

3

PROCEEDINGS:

4

5

6

THE COURT: THIS IS THE CASE OF PEOPLE VERSUS
VICTOR HERNANDEZ WHO I RECOGNIZE. HE'S HERE DRESSED OUT, IN
CUSTODY, REPRESENTED BY?

7

MR. KAPP: J.J. KAPP, YOUR HONOR.

8

9

MR. CHADWICK: GEORGE CHADWICK ON BEHALF OF THE
PEOPLE.

10

(WHEREUPON DISCUSSION WAS HAD, NOT TRANSCRIBED.)

11

12

13

14

15

16

17

18

THE COURT: MR. HERNANDEZ, IF YOU WANT TO SETTLE
THE CASE, MY UNDERSTANDING FROM MR. CHADWICK IS THAT HE IS
OFFERING TO DISMISS THE ROBBERY AND THE PETTY THEFT WITH A
PRIOR CHARGE, COUNTS 1 AND 2, IF YOU PLEAD EITHER GUILTY OR
NO CONTEST TO COUNT 3 WHICH IS THE POSSESSION OF PCP CHARGE
AND COUNT 4, THE MISDEMEANOR, UNDER THE INFLUENCE CHARGE AND
ADMIT THE STRIKES THAT ARE CHARGED HERE AND THE SERIOUS
FELONY PRIORS, TOO --

19

MR. CHADWICK: NO.

20

THE COURT: THEY DON'T HAVE ANY AFFECT HERE?

21

22

23

24

25

26

27

MR. CHADWICK: CORRECT, YOUR HONOR. PEOPLE WOULD
DISMISS THOSE. PEOPLE WOULD ASK MR. HERNANDEZ TO ADMIT ALL
OF THE PRISON PRIORS AND LEAVE IT TO THE COURT'S DISCRETION
AS TO WHETHER TO IMPOSE THEM. THE ONLY -- ALL THE PEOPLE
INTEND TO DO IS DISMISS COUNTS 1 AND 2 IF MR. HERNANDEZ
ADMITS THE REST OF THE INFORMATION THAT APPLIES TO THIS
CASE.

28

THE COURT: SO THEY ARE OFFERING TO DISMISS COUNTS

nothing
said @
R/S

1 1 AND 2 IF YOU PLEAD EITHER GUILTY OR NO CONTEST TO COUNTS 3
2 AND 4 AND ADMIT ALL THE OTHER ALLEGATIONS THAT ARE CHARGED
3 HERE. AND THE OTHER ALLEGATIONS AND THE MOST IMPORTANT ONES
4 ARE THEY HAVE TWO STRIKES CHARGED WHICH WOULD BE REQUIRE
5 TWENTY-FIVE YEARS TO LIFE RIGHT THERE SIMPLY BECAUSE OF THE
6 FELONY POSSESSION CHARGE AND THEN THEY'VE GOT SOME SERIOUS
7 FELONY CHARGES HERE WHICH, IF YOU GOT CONVICTED OF THE
8 ROBBERY WOULD, ADD FIVE YEARS FOR EACH ONE OF THOSE. BUT
9 BECAUSE THE ROBBERY IS GETTING DISMISSED THEY DO NOT APPLY
10 EVEN THOUGH YOU'RE ADMITTING THEM.

11 THEN YOU HAVE WHAT LOOKS LIKE FOUR PRISON PRIORS
12 CHARGED HERE. DOES THAT SOUND RIGHT TO YOU?

13 MR. CHADWICK: YES.

14 MR. KAPP: YES.

15 THE COURT: THEY'RE ASKING YOU TO ADMIT THOSE AND
16 IN THEORY I COULD GIVE YOU ONE YEAR FOR EACH OF THOSE OR AN
17 ADDITIONAL FOUR YEARS ON TOP OF THE TWENTY-FIVE YEARS TO
18 LIFE AT THE TIME OF SENTENCING IF I THOUGHT IT WAS
19 APPROPRIATE.

20 MR. CHADWICK: YOUR HONOR, PEOPLE MOVE TO STRIKE
21 WILL MOVE TO STRIKE THE FIRST PRISON PRIOR UNDER THE PEOPLE
22 VERSUS JONES CASE. I'M NOT CONVINCED AT THIS TIME THAT
23 THAT'S AN APPROPRIATE DUEL USE OF A PRISON PRIOR. SO WE
24 WOULD ONLY ASK HIM TO ADMIT THE LAST THREE.

25 THE COURT: ALL RIGHT. SO IN ESSENCE, YOU ARE
26 FACING AT LEAST TWENTY-FIVE YEARS TO LIFE, POSSIBLY
27 TWENTY-EIGHT YEARS TO LIFE DEPENDING ON YOUR PROBATION
28 REPORT AND DISCUSSIONS. WE HAVE AT THE TIME OF YOUR

shows
No
TIB

1 SENTENCING.

2 DO YOU UNDERSTAND THAT PROMISE TO YOU? YOU HAVE
3 TO ANSWER OUT LOUD.

4 THE DEFENDANT: I DO.

5 THE COURT: MY QUESTION TO YOU IS: HAS ANYONE
6 PROMISED ANYTHING ELSE BESIDES THAT TO YOU?

7 THE DEFENDANT: NO.

8 MR. KAPP: YOUR HONOR, CAN I STOP A MINUTE?

9 THE COURT: YES.

10 MR. KAPP: WOULD IT BE ACCURATE TO SAY THAT THE
11 COURT HAS INDICATED THAT AT LEAST PRELIMINARILY THAT IF MR.
12 HERNANDEZ IS CONVICTED OF THE POSSESSION, HAVING ADMITTED
13 THE TWO STRIKE PRIORS AND THE THREE PRISON PRIORS, THAT THE
14 COURT WOULD BE INCLINED TO IMPOSE THE MANDATORY SENTENCE OF
15 TWENTY-FIVE TO LIFE, WOULD THAT BE --

16 THE COURT: I THINK THAT'S WHERE I WOULD BE
17 STARTING.

18 MR. CHADWICK: PEOPLE ARE NOT GOING TO ASK THE
19 COURT TO IMPOSE THE THREE, ANY OF THE THREE PRISON PRIORS.

20 THE COURT: I HAVE TO ADVISE YOU TECHNICALLY THAT
21 YOU'RE EXPOSED TO THOSE THREE PRIORS BECAUSE THEY WANT YOU
22 TO ADMIT THEM HERE. BUT IN MY FEELING ABOUT THIS CASE AND
23 YOUR HISTORY, I THINK TWENTY-FIVE YEARS TO LIFE IS
24 SATISFACTORY UNLESS THERE'S SOMETHING IN YOUR PROBATION
25 REPORT THAT COMES UP THAT WE DON'T KNOW ABOUT RIGHT NOW. DO
26 YOU UNDERSTAND ALL THAT, MR. HERNANDEZ?

27 THE DEFENDANT: YES, SIR.

28 THE COURT: SO, THE FIRST QUESTION AGAIN IS: HAS

how's
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5 to L
5 to L
at T/B

2064
-chero?

1 ANYONE PROMISED YOU ANYTHING ELSE OTHER THAN THAT THE
2 DISTRICT ATTORNEY IS GOING TO DISMISS COUNTS 1 AND 2, THE
3 ROBBERY AND THE PETTY THEFT WITH A PRIOR, AND THEY'RE ALSO
4 GOING TO DISMISS THE FIRST OF THE PRISON PRIORS IF YOU PLEAD
5 GUILTY OR NO CONTEST TO COUNTS 3 AND 4, POSSESSION OF PCP
6 AND THE MISDEMEANOR, UNDER THE INFLUENCE, AND ADMIT ALL THE
7 STRIKES AND ALL THE OTHER PRISON PRIORS AND SERIOUS FELONIES
8 THAT ARE ALLEGED; IS THAT RIGHT?

THE DEFENDANT: YES, SIR.

THE COURT: NOBODY HAS PROMISED YOU ANYTHING ELSE
11 BESIDES THAT, IS THAT CORRECT?

12 THE DEFENDANT: NO.

13 THE COURT: IS THAT CORRECT?

14 THE DEFENDANT: YES.

15 THE COURT: HAS ANYONE THREATENED YOU OR ANYONE
16 CLOSE TO YOU TO MAKE YOU CHANGE YOUR PLEA HERE AND SETTLE
17 THE CASE?

18 THE DEFENDANT: NO.

19 THE COURT: ARE YOU SETTLING THE CASE THEN OF YOUR
20 OWN FREE WILL?

21 THE DEFENDANT: YES.

22 THE COURT: YOU'RE IN JAIL NOW, IS THAT RIGHT,
23 SIR?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: AND WHERE ARE YOU HOUSED?

26 THE DEFENDANT: 7-B.

27 THE COURT: HAVE YOU TAKEN ANY DRUGS, MEDICINE,
28 NARCOTICS OR ALCOHOL IN THE LAST TWO DAYS?

No
TIB
@ UH make
question
re: issues/
conditions
of the plea

1 THE DEFENDANT: YES, I HAVE.

2 THE COURT: WHAT HAVE YOU TAKEN?

3 THE DEFENDANT: THORAZINE.

4 THE COURT: ARE YOU ALSO USING INSULIN?

5 THE DEFENDANT: YES.

6 THE COURT: AND HOW LONG HAVE YOU BEEN TAKING
7 THORAZINE?

8 THE DEFENDANT: FOR ABOUT TWO, THREE DAYS ALREADY.

9 THE COURT: SAY THAT AGAIN?

10 THE DEFENDANT: TWO, THREE DAYS.

11 THE COURT: YES?

12 THE DEFENDANT: YES.

13 THE COURT: AND IS THAT WITH A DOCTOR'S ORDERS?

14 THE DEFENDANT: YES.

15 THE COURT: WHY ARE YOU TAKING THE THORAZINE?

16 THE DEFENDANT: I'M HEARING VOICES AT NIGHT.

17 THE COURT: DOES THE THORAZINE HELP YOU IN REGARD
18 TO THE VOICES?

19 THE DEFENDANT: NO.

20 THE COURT: DOES THE THORAZINE MAKE IT DIFFICULT
21 FOR YOU TO THINK AND UNDERSTAND?

22 THE DEFENDANT: NO, IT'S FOR ME TO JUST RELAX ME
23 AND MAKE ME FALL ASLEEP.

24 THE COURT: IS THE THORAZINE AFFECTING YOUR
25 ABILITY TO UNDERSTAND WHAT I'M SAYING HERE TODAY?

26 THE DEFENDANT: NO.

27 THE COURT: YOU'RE UNDERSTANDING EVERYTHING I SAY?

28 THE DEFENDANT: YES.

1 THE COURT: IF I SAY OR IF ANYBODY SAYS ANYTHING
2 THAT YOU DON'T UNDERSTAND, WILL YOU PROMISE TO RAISE YOUR
3 HAND AND ASK A QUESTION?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ARE YOU THINKING CLEARLY THEN HERE
6 TODAY?

7 THE DEFENDANT: YES.

8 THE COURT: HOW LONG HAS MR. KAPP BEEN YOUR LAWYER
9 ROUGHLY, HOW MANY MONTHS?

10 THE DEFENDANT: ABOUT NINE AND A HALF.

11 THE COURT: BASICALLY, PRETTY MUCH MAYBE WITHIN A
12 MONTH OR SO AFTER YOU GOT ARRESTED, WAS HE YOUR LAWYER?

13 THE DEFENDANT: NO.

14 THE COURT: YOU GOT ARRESTED -- DID YOU GET
15 ARRESTED IN AUGUST OF LAST YEAR?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: MR. KAPP, WHEN DID YOU FIRST COME INTO
18 THE PICTURE IN THIS CASE?

19 MR. KAPP: SEPTEMBER 12TH IT LOOKS LIKE.

20 THE COURT: ALL RIGHT. SO ABOUT A MONTH AFTER YOU
21 GOT ARRESTED MR. KAPP GOT APPOINTED TO THE CASE. IS THAT
22 RIGHT?

23 THE DEFENDANT: YES.

24 THE COURT: AND HAS HE TALKED TO YOU BEFORE TODAY,
25 HAS MR. KAPP GONE OVER AND TALKED TO YOU BEFORE TODAY?

26 THE DEFENDANT: YEAH.

27 THE COURT: HAS HE TAKEN THE TIME TO EXPLAIN TO
28 YOU WHAT THE DISTRICT ATTORNEY HAS TO PROVE IN ORDER TO

1 CONVICT YOU OF THE CHARGED CRIMES IN THE INFORMATION, HAS HE
2 GONE OVER THOSE THINGS WITH YOU?

3 THE DEFENDANT: YES.

4 THE COURT: HAS HE ALSO GONE OVER ANY DEFENSES YOU
5 MIGHT HAVE, ESPECIALLY TO SOME OF THE CHARGES AT LEAST?

6 THE DEFENDANT: YES.

7 THE COURT: AND HAS HE ALSO EXPLAINED TO YOU YOUR
8 STATUTORY AND YOUR CONSTITUTIONAL RIGHTS, HAS HE GONE OVER
9 THOSE WITH YOU?

10 THE DEFENDANT: YES, SIR.

11 THE COURT: ARE YOU SATISFIED WITH MR. KAPP'S
12 LEGAL ADVICE?

13 THE DEFENDANT: YES.

14 THE COURT: MR. KAPP, DO YOU UNDER THE
15 CIRCUMSTANCES CONCUR WITH THE RESOLUTION OF THE CASE IN THIS
16 FASHION?

17 MR. KAPP: I DO, YOUR HONOR. BECAUSE AFTER
18 ADVISING MR. HERNANDEZ OF ALL THE POSSIBILITIES THAT I SAW
19 AND THE OPTIONS THAT HE HAD, IT IS HIS DECISION THAT HE
20 WANTS TO DO THIS. AND FOR THAT REASON IT'S NOT BECAUSE I
21 AGREE WITH THE LAW THAT'S APPLIED AND IT'S NOT BECAUSE I
22 THINK THAT TWENTY-FIVE TO LIFE IS A FAIR SENTENCE.

23 THE COURT: BUT CONSIDERING THE OTHER ALTERNATIVES
24 IF HE WERE TO GET CONVICTED AFTER TRIAL -- I THINK SOMEBODY
25 SAID SIXTY YEARS TO LIFE, SOMETHING REALLY OUTRAGEOUS,
26 TWENTY-FIVE YEARS TO LIFE IS SOMETHING THAT YOU THINK IS A
27 BETTER OPTION FOR HIM AT THIS TIME.

28 MR. KAPP: WELL, I THINK THAT HE IS PERFECTLY ABLE

1 TO DECIDE IF THAT'S THE BETTER OPTION AND I RESPECT HIS
2 DECISION TO DO THAT.

3 THE COURT: ALL RIGHT. ARE YOU RECOMMENDING THAT
4 HE NOT SETTLE THE CASE?

5 MR. KAPP: I'M NOT. I'M NOT RECOMMENDING THAT HE
6 NOT SETTLE THE CASE AND I'VE SIMPLY LAID OUT THE OPTIONS. I
7 TOLD HIM TO GO BACK OVER THE NOON HOUR AND THINK ABOUT IT
8 AND THIS IS THE DECISION HE'S MADE AND SO --

9 THE COURT: AND YOU RESPECT THAT.

10 MR. KAPP: I RESPECT IT AND IN THAT SENSE I
11 CONCUR.

12 THE COURT: VERY WELL.

13 MR. HERNANDEZ, THIS DOES NOT APPLY TO YOU BUT I'M
14 REQUIRED BY LAW TO SAY THIS. IF YOU ARE NOT A CITIZEN,
15 CONVICTION OF A FELONY CAN RESULT IN DEPORTATION, DENIAL OF
16 NATURALIZATION OR REFUSAL OF RE-ENTRY INTO THE UNITED
17 STATES. THAT DOES NOT APPLY IF YOU ARE A CITIZEN. DO YOU
18 UNDERSTAND THAT?

19 THE DEFENDANT: YEAH.

20 THE COURT: AND I AM ALSO REQUIRED TO TELL YOU THE
21 MAXIMUM PUNISHMENT YOU COULD RECEIVE UNDER THIS SETTLEMENT.
22 YOU MUST RECEIVE TWENTY-FIVE YEARS TO LIFE BECAUSE OF THE
23 TWO STRIKES THAT YOU WILL BE ADMITTING HERE TODAY AFTER THE
24 CONVICTION OF THE FELONY POSSESSION CHARGE AND YOU COULD
25 RECEIVE AN ADDITIONAL THREE YEARS FOR ONE -- FOR EACH OF THE
26 THREE PRISON PRIORS THAT YOU WILL BE ADMITTING FOR A MAXIMUM
27 OF UP TO TWENTY-EIGHT YEARS TO LIFE. DO YOU UNDERSTAND THE
28 THEORETICAL MAXIMUM?

T/B?
or
Bottom
arguably

1 THE DEFENDANT: YES, SIR.

2 THE COURT: UNDERSTAND THE MINIMUM OF TWENTY-FIVE
3 YEARS TO LIFE?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: I'M FORGETTING HOW LONG YOU WOULD BE
6 ON PAROLE ON A LIFE SENTENCE. IS IT FIVE YEARS? ANYBODY
7 KNOW?

8 THE DEFENDANT: I DON'T KNOW.

9 MR. CHADWICK: MAXIMUM FIVE YEARS FOR LIFE CRIMES,
10 CAN BE EXTENDED TO SEVEN. LIFE PAROLE FOR MURDER IS WHAT IT
11 SAYS HERE.

12 MR. KAPP: I BELIEVE THAT THAT'S CORRECT.

13 THE COURT: YOU CAN BE PLACED ON PAROLE ONCE YOU
14 GET OUT OF PRISON FOR UP TO FIVE YEARS. IF YOU VIOLATE THE
15 RULES OF PAROLE, THEY CAN HAVE A HEARING AND RETURN YOU TO
16 PRISON FOR UP TO ONE YEAR FOR EACH VIOLATION OF PAROLE --
17 AND YOU ALREADY KNOW THAT BECAUSE YOU'VE BEEN ON PAROLE
18 BEFORE -- AND EXTEND YOUR PAROLE SUPERVISION UP TO SEVEN
19 YEARS MAXIMUM BECAUSE THIS IS A TWENTY-FIVE TO LIFE CASE.
20 DO YOU UNDERSTAND THAT?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: THERE'S A TWENTY THOUSAND DOLLAR
23 MAXIMUM FINE, THERE'S A TWO HUNDRED DOLLAR MINIMUM FINE THAT
24 I MUST IMPOSE EVEN THOUGH YOU'RE GOING TO PRISON. DO YOU
25 UNDERSTAND THAT?

26 THE DEFENDANT: YES.

27 THE COURT: I BELIEVE UNDER 11377 YOU ARE REQUIRED
28 TO REGISTER AS A NARCOTICS OFFENDER. FAILURE TO DO THAT

1 WOULD BE A NEW CRIME AND THEY COULD PROSECUTE YOU FOR
2 FAILURE TO REGISTER AS A NARCOTICS OFFENDER ONCE YOU GET OUT
3 OF PRISON. DO YOU UNDERSTAND THAT?

4 THE DEFENDANT: YES.

5 THE COURT: THERE IS AN A NINETY DAY MINIMUM ON
6 THE UNDER THE INFLUENCE OF PCP CHARGE WHICH IS THE LEAST OF
7 YOUR PROBLEMS BUT YOU UNDERSTAND THAT?

8 THE DEFENDANT: YES.

9 THE COURT: YOU WILL HAVE, OF COURSE, ANOTHER
10 FELONY CONVICTION ON YOUR RECORD -- YOU'VE GOT A LOT OF THEM
11 ALREADY -- AND YOU WILL HAVE ANOTHER PRISON PRIOR ON YOUR
12 RECORD AND YOU'VE GOT A FEW OF THOSE ALREADY AS A RESULT OF
13 SETTLING THE CASE HERE TODAY. DO YOU UNDERSTAND THAT?

14 THE DEFENDANT: YES.

15 THE COURT: DID YOU WANT TO PLEAD GUILTY OR NO
16 CONTEST HERE TODAY?

17 THE DEFENDANT: GUILTY.

18 THE COURT: WHEN YOU PLEAD GUILTY TO THE TWO
19 CHARGES, COUNTS 3 AND 4, AND ALSO WHEN YOU ADMIT THE STRIKES
20 ARE TRUE AND VALID AND WHEN YOU ADMIT THE PRISON PRIORS ARE
21 TRUE AND VALID, THE THREE OF THEM THAT YOU'RE GOING TO
22 ADMIT, WHEN YOU DO ALL THOSE THINGS YOU'LL BE GIVING UP
23 IMPORTANT RIGHTS. DO YOU UNDERSTAND THAT?

24 THE DEFENDANT: YES.

25 THE COURT: THE FIRST RIGHT I WANT TO GO OVER IS
26 YOUR RIGHT TO A JURY TRIAL. YOU HAVE THE RIGHT ON THE
27 CHARGES AND ON THE PRIORS AND ON THE STRIKES TO HAVE A JURY
28 TRIAL. DO YOU UNDERSTAND THAT?

1 THE DEFENDANT: YES.

2 THE COURT: AND YOU GIVE IT UP SO YOU CAN SETTLE
3 THE CASE, PLEAD GUILTY AND ADMIT THE STRIKES AND THE PRIORS?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: NOW, IF YOU DIDN'T WANT TO HAVE A JURY
6 TRIAL YOU COULD HAVE A JUDGE OR A COURT TRIAL WITHOUT A JURY
7 AND IF THE DISTRICT ATTORNEY GAVE UP THEIR RIGHT TO A JURY
8 TRIAL YOU WOULD HAVE A RIGHT TO A COURT TRIAL. DO YOU
9 UNDERSTAND THAT RIGHT?

10 THE DEFENDANT: YES.

11 THE COURT: DO YOU GIVE IT UP ALSO SO YOU CAN
12 PLEAD GUILTY AND ADMIT THE STRIKES AND THE PRIORS?

13 THE DEFENDANT: YES.

14 THE COURT: YOU HAVE THE RIGHT TO REMAIN SILENT.
15 IF YOU SAY THE WORD GUILTY, YOU ADMIT THE STRIKES ARE TRUE,
16 IF YOU ADMIT THE PRISON PRIORS ARE TRUE, YOU ARE CONVICTING
17 YOURSELF, YOU'RE INCRIMINATING YOURSELF AND YOU'RE GIVING UP
18 THAT RIGHT. DO YOU UNDERSTAND THAT?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: DO YOU GIVE IT UP SO WE CAN SETTLE THE
21 CASE?

22 THE DEFENDANT: YES.

23 THE COURT: YOU HAVE THE RIGHT TO CONFRONT AND
24 CROSS-EXAMINE THE WITNESSES AND THE EVIDENCE AGAINST YOU.
25 THAT MEANS YOU COULD SIT THERE AND SEE THE WITNESSES, LISTEN
26 TO THEM TESTIFY AND HAVE YOUR LAWYER ASK THEM QUESTIONS
27 UNDER OATH ABOUT WHAT THEY SAY YOU DID WRONG. DO YOU
28 UNDERSTAND THAT RIGHT?

1 THE DEFENDANT: YES.

2 THE COURT: AND DO YOU GIVE UP THAT RIGHT?

3 THE DEFENDANT: YES.

4 THE COURT: AND FINALLY, YOU HAVE THE RIGHT TO
5 DEFEND YOURSELF. THAT MEANS YOU COULD TESTIFY AND TELL US
6 YOUR SIDE AND YOU COULD SUBPOENA UNDER COURT ORDER WITNESSES
7 AND EVIDENCE INTO COURT TO TESTIFY FOR YOUR SIDE. DO YOU
8 UNDERSTAND THAT RIGHT?

9 THE DEFENDANT: YES.

10 THE COURT: AND DO YOU GIVE IT UP SO WE CAN SETTLE
11 THE CASE?

12 THE DEFENDANT: YES.

13 THE COURT: MR. CHADWICK, DO YOU HAVE ANY OTHER
14 ADDITIONAL SUGGESTED VOIR DIRE, SIR?

15 MR. CHADWICK: SOME COURTS DON'T LIKE THIS
16 QUESTION AT THIS STAGE BUT I ASK THAT HE BE ADVISED OF
17 CREDITS.

18 THE COURT: WELL, YOU'RE ENTITLED TO CREDIT FOR
19 TIME SERVED HERE SINCE YOU WERE ARRESTED, ACCORDING TO THE
20 LAW, AND YOU WILL BE ELIGIBLE POSSIBLY, DEPENDING ON WHERE
21 YOU'RE HOUSED IN THE STATE DEPARTMENT OF CORRECTIONS, FOR
22 GOOD TIME AND WORK TIME CREDIT. BUT BECAUSE OF THE THREE
23 STRIKES LAW, YOU DON'T GET FIFTY PERCENT OFF, YOU ONLY GET
24 TWENTY PERCENT OFF. DO YOU UNDERSTAND THAT?

25 THE DEFENDANT: YES.

26 THE COURT: WE CAN'T PROMISE WHERE YOU'RE GOING TO
27 BE HOUSED UP THERE, AND IF YOU REFUSE TO WORK OR FOLLOW THE
28 RULES, THEN THEY'LL TAKE THAT AWAY AND YOU'LL DO THE ENTIRE

1 AMOUNT. DO YOU UNDERSTAND THAT?

2 THE DEFENDANT: YES.

3 MR. CHADWICK: PEOPLE ARE NOT ASKING FOR
4 RESTITUTION TO THE VICTIM BECAUSE I DON'T THINK SHE SUFFERED
5 ANY ECONOMIC LOSSES.

6 THE COURT: WELL, IN THE PRELIM TRANSCRIPT SHE GOT
7 A ONE-INCH GASH OUT OF THIS THING.

8 MR. CHADWICK: I DON'T HAVE ANY EVIDENCE WITH ME
9 THAT WE COULD REDUCE TO A DOLLAR FIGURE THAT SHE RECEIVE
10 MEDICAL TREATMENT.

11 THE COURT: JUST TO BE SAFE, EVEN THOUGH YOU'RE
12 GOING TO PRISON, IT'S POSSIBLE, IN FACT IT'S LIKELY THAT I
13 WILL ORDER YOU TO PAY RESTITUTION TO THE VICTIM FOR ANY
14 DAMAGE, LOSS OR HARM THAT YOU CAUSED HERE AS A RESULT OF
15 THIS EVEN THOUGH YOU WERE UNDER THE INFLUENCE OF PCP AT THIS
16 TIME. IT'S YOUR RESPONSIBILITY.

17 SHE MAY NOT NEED ANY COMPENSATION BECAUSE YOU
18 DIDN'T GET AWAY WITH THE PROPERTY AND SHE MAY HAVE ONLY HAD
19 A MINOR INJURY THAT DOESN'T REQUIRE ANY MEDICAL TREATMENT OR
20 COMPENSATION OR SHE MAY NEED COUNSELING AS A RESULT OF THIS
21 AND I MAY ORDER RESTITUTION. BUT THE IMPORTANT THING IS IF
22 YOU DISAGREE WITH THE AMOUNT THAT'S SPECIFIED BY THE
23 AUTHORITIES THAT YOU OWE ON RESTITUTION, YOU HAVE THE RIGHT
24 TO A COURT HEARING ON HOW MUCH YOU WOULD HAVE TO PAY. SO IF
25 THEY'RE ASKING FOR A MILLION DOLLARS YOU CAN COME IN AND SAY
26 I WANT A COURT HEARING ON THAT. DO YOU UNDERSTAND THAT?

27 THE DEFENDANT: YES.

28 THE COURT: MR. KAPP, DO YOU HAVE ANYTHING FOR THE

1 RECORD THAT YOU WOULD LIKE TO ADD, SIR?

2 MR. KAPP: NO THANK YOU, YOUR HONOR.

3 THE COURT: ALL RIGHT. MR. HERNANDEZ, DO YOU HAVE
4 ANY QUESTIONS OF ANYONE HERE ABOUT YOUR RIGHTS OR ABOUT THE
5 SETTLEMENT?

6 THE DEFENDANT: NO.

7 THE COURT: ALL RIGHT. SIR. THEN WITH ALL THE
8 MAXIMUMS AND THE MINIMUMS AND ALL YOUR RIGHTS IN MIND, WHAT
9 IS YOUR PLEA TO THE FELONY CHARGE IN COUNT 3, ON OR ABOUT
10 AUGUST THE 13TH OF LAST YEAR, 1995, THAT YOU POSSESSED PCP,
11 IT'S A FELONY, VIOLATION OF HEALTH AND SAFETY CODE SECTION
12 11377(A) AS CHARGED IN THE INFORMATION, GUILTY OR NOT
13 GUILTY?

14 THE DEFENDANT: GUILTY.

15 THE COURT: AND TO COUNT 4, MISDEMEANOR CHARGE,
16 11550 OF THE HEALTH AND SAFETY CODE, UNDER THE INFLUENCE OF
17 PCP AS CHARGED IN THE INFORMATION ON THE SAME DATE?

18 THE DEFENDANT: GUILTY.

19 THE COURT: IT'S FURTHER ALLEGED THAT PRIOR TO THE
20 COMMISSION OF THE FELONY IN COUNT 3 THAT YOU SUFFERED A
21 STRIKE PRIOR CONVICTION, WITHIN THE MEANING OF 1170.12 AND
22 667(B) THROUGH (I) AND IT WAS FOR BURGLARY OF AN INHABITED
23 DWELLING HOUSE. AND THE DOCKET OUT OF THIS COUNTY IS
24 82270. IS THAT STRIKE CONVICTION AS ALLEGED IN THE
25 INFORMATION IN THOSE TWO DIFFERENT WAYS TRUE AND VALID?

26 THE DEFENDANT: TRUE.

27 THE COURT: IT'S FURTHER ALLEGED THAT YOU SUFFERED
28 ANOTHER STRIKE AND THAT WAS THE ONE THAT WAS TWENTY YEARS

1 AGO IN 1975, THAT YOU SUFFERED ANOTHER STRIKE CONVICTION,
2 WITHIN THE MEANING OF 1170.12 OF THE PENAL CODE AND 667(B)
3 THROUGH (I) OF THE PENAL CODE, AND THAT IS ALSO FOR BURGLARY
4 OF AN INHABITED DWELLING HOUSE AND THE DOCKET OUT OF THIS
5 COUNTY ON THAT CASE IS 61347. APPARENTLY THAT'S THE ONE
6 THAT HAPPENED IN ABOUT 1986 OR SO. IS THAT STRIKE PRIOR
7 TRUE AND VALID AS ALLEGED IN THE INFORMATION?

8 MR. CHADWICK: EXCUSE ME, YOUR HONOR, 1975, THE
9 FIRST ONE. WE'VE CHARGED THEM IN REVERSE CHRONOLOGICAL
10 ORDER.

11 THE COURT: OKAY. THE FIRST ONE YOU ADMITTED WAS
12 1982.

13 MR. KAPP: '82.

14 THE COURT: ALL RIGHT. AND YOU ADMIT THAT THE
15 FIRST CHARGED STRIKE PRIOR IS TRUE AND VALID 82270, IS THAT
16 RIGHT, SIR?

17 THE DEFENDANT: YES.

18 THE COURT: THE SECOND ONE CHARGED IS THE OLDER OF
19 THE TWO AND THAT IS THE ONE THAT'S TWENTY YEARS OLD AND THAT
20 DOCKET IS 61347. THAT ALSO WAS BURGLARY OF AN INHABITED
21 DWELLING HOUSE, WITHIN THE MEANING OF 1170.12 AND 667(B)
22 THROUGH (I) AS ALLEGED HERE IN THE INFORMATION. IS THAT
23 STRIKE PRIOR TRUE AND VALID?

24 THE DEFENDANT: TRUE.

25 THE COURT: OKAY. THE DISTRICT ATTORNEY IS ALSO
26 ASKING THAT YOU ADMIT TWO SERIOUS FELONY PRIORS EVEN THOUGH
27 THEY HAVE NO LEGAL EFFECT HERE.

28 MR. CHADWICK: PEOPLE MOVE TO STRIKE THOSE AT THIS

1 TIME.

2 THE COURT: TAKE THAT MOTION UNDER SUBMISSION.

3 PEOPLE HAVE A MOTION TO STRIKE THE FIRST CHARGED
4 PRISON PRIOR. I'LL TAKE THAT UNDER SUBMISSION.

5 MR. CHADWICK: YES, YOUR HONOR.

6 MR. CHADWICK: UNDER PEOPLE VERSUS JONES.

7 THE COURT: OKAY. SO MR. HERNANDEZ, WE ARE DOWN
8 NOW TO THE THREE REMAINING PRISON PRIORS.

9 IT IS ALLEGED, SIR, THAT YOU SUFFERED A PRISON
10 PRIOR FOR ESCAPE, 4530(B), WITHIN THE MEANING OF 667.5(B) OF
11 THE PENAL CODE AND THAT'S ON DOCKET 87364. I GUESS THAT WAS
12 WHERE YOU FAILED TO RETURN TO A HALFWAY HOUSE OR WORK
13 FURLOUGH FACILITY IN STATE PRISON. IS THAT PRISON PRIOR AS
14 CHARGED IN THE INFORMATION TRUE AND VALID?

15 THE DEFENDANT: TRUE.

16 THE COURT: IT'S NEXT CHARGED THAT YOU SUFFERED
17 ANOTHER PRISON PRIOR FOR POSSESSION FOR SALE -- EXCUSE
18 ME -- SALES OF LSD. THE DOCKET IS 109366 AND THAT IS
19 CHARGED WITHIN THE MEANING OF 667.5(B) OF THE PENAL CODE.
20 IS THAT PRISON PRIOR ALSO TRUE AND VALID?

21 THE DEFENDANT: TRUE.

22 THE COURT: FINALLY, IT'S ALLEGED THAT YOU HAVE
23 ANOTHER PRISON PRIOR, WITHIN THE MEANING OF 667.5(B) OUT OF
24 STANISLAUS COUNTY FOR BURGLARY, DOCKET 270104, AND
25 APPARENTLY THAT'S THE LAST OF YOUR PRISON PRIORS. IS THAT
26 PRISON PRIOR TRUE AND VALID, SIR? MR. HERNANDEZ, IS THAT
27 PRISON PRIOR TRUE AND VALID? THAT CONVICTION WAS IN
28 STANISLAUS COUNTY FOR BURGLARY AS CHARGED?

1 THE DEFENDANT: YES.

2 MR. CHADWICK: YOUR HONOR, PEOPLE ARE MOVING -- TO
3 THE EXTENT IT'S NOT ALREADY CLEAR ON THE RECORD, PEOPLE ARE
4 MOVING TO DISMISS COUNTS 1 AND 2. THE REASONS ARE IN THE
5 INTERESTS OF JUSTICE. BECAUSE OF ALL THE REASONS STATED IN
6 MR. KAPP'S REQUEST FOR DISMISSAL OF THE PRIOR UNDER SECTION
7 1385 AND BECAUSE OF MR. HERNANDEZ' CHANGE OF PLEA TO COUNTS
8 3 AND 4, PEOPLE BELIEVE THAT THE LESSER SENTENCE FROM COUNTS
9 3 AND 4 IS MORE APPROPRIATE IN THIS CASE THAN ALL FOUR
10 COUNTS IN THIS PRETRIAL STAGE RIGHT HERE. SO BECAUSE OF THE
11 RELATIVE LACK OF VIOLENCE AND THE HISTORY AND OTHER REASONS
12 STATED, PEOPLE MOVE TO DISMISS COUNTS 1 AND 2.

13 THE COURT: YOU'RE ASKING ME AT THE TIME OF
14 SENTENCING TO DISMISS THE ROBBERY AND THE PETTY THEFT WITH A
15 PRIOR BECAUSE HE'S ENTERED PLEAS HERE TO THE REMAINING
16 CHARGES AND ADMITTED THREE OF THE PRISON PRIORS AND HE'S
17 ADMITTED BOTH STRIKES.

18 MR. CHADWICK: YES, YOUR HONOR.

19 THE COURT: THAT'S IN THE INTERESTS OF JUSTICE AND
20 FOR THE REASONS STATED BY MR. KAPP WHEN HE WAS ASKING ME TO
21 EITHER REDUCE THE CASE OR TO STRIKE ONE OF THE STRIKES?

22 MR. CHADWICK: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT. I'LL TAKE THAT MOTION
24 UNDER SUBMISSION 'TIL THE DATE OF SENTENCING AS TO MR.
25 HERNANDEZ.

26 NOW, MR. HERNANDEZ, DO YOU HAVE ANY QUESTIONS OF
27 ANYONE HERE, INCLUDING YOUR LAWYER, AS TO THE SETTLEMENT OF
28 THE CASE, TERMS AND CONDITIONS OF THE SETTLEMENT OR ANY OF

1 YOUR RIGHTS? DO YOU HAVE ANY QUESTIONS?

2 THE DEFENDANT: NO.

3 THE COURT: ALL RIGHT. I WILL THEN FIND THAT YOUR
4 PLEA IS FREE AND VOLUNTARY, KNOWING AND INTELLIGENT, AND I
5 WILL ASK COUNSEL IF THEY STIPULATE THAT I CAN FIND A FACTUAL
6 BASIS TO SUPPORT THE PLEA AND THE ADMISSIONS -- LET ME GO
7 BACK.

8 I'LL FIND THAT BOTH YOUR PLEAS AND YOUR ADMISSIONS
9 ARE FREE AND VOLUNTARY, KNOWING AND INTELLIGENT, AND I'LL
10 ASK COUNSEL IF THERE'S A STIPULATION THAT THERE'S A FACTUAL
11 BASIS TO SUPPORT THE PLEAS AND ADMISSIONS IN THE OFFENSE
12 REPORTS, PRELIM TRANSCRIPT AND COURT RECORDS FROM THIS
13 COUNTY AND STANISLAUS COUNTY; MR. KAPP?

14 MR. KAPP: SO STIPULATED.

15 THE COURT: MR. CHADWICK?

16 MR. CHADWICK: SO STIPULATED.

17 THE COURT: I'LL FIND A FACTUAL BASIS BASED ON
18 THAT STIPULATION AND ON THE COURT RECORDS, TAKE JUDICIAL
19 NOTICE OF THE COURT RECORDS.

20 I WILL ORDER A FULL REPORT IN THIS CASE FULL
21 PROBATION REPORT. THEY'LL INTERVIEW YOU AND GIVE YOU A
22 CHANCE TO TELL US YOUR SIDE OF IT, MR. HERNANDEZ, IN MORE
23 DETAIL. I REALLY HAVEN'T TALKED WITH YOU DIRECTLY ABOUT
24 WHAT WAS GOING ON AT THAT TIME BACK IN AUGUST OF LAST YEAR,
25 I WOULD CERTAINLY LIKE TO HEAR YOUR SIDE OF IT, TO BE
26 HONEST.

27 I'M WONDERING, MR. KAPP, DOES HE WANT TO WAIVE
28 TIME FOR SENTENCING OR NOT?

1 MR. KAPP: TIME IS WAIVED FOR SENTENCING, YOUR
2 HONOR. WE ARE PREPARED TO WAIVE A FULL REPORT BUT IF THE
3 COURT WOULD LIKE A FULL REPORT --

4 THE COURT: MR. CHADWICK, WHAT DO YOU THINK?

5 MR. CHADWICK: PEOPLE ARE ASKING FOR A FULL
6 REPORT, YOUR HONOR.

7 THE COURT: I THOUGHT THE PEOPLE MIGHT ASK FOR
8 ONE.

9 I'LL GET A FULL REPORT. I THINK IT'S APPROPRIATE.
10 IT'S A SERIOUS CASE, SERIOUS CHARGE, SERIOUS CONSEQUENCES,
11 AND I WOULD LIKE TO HEAR FROM MR. HERNANDEZ. I STILL HAVE
12 TO FIGURE OUT WHAT TO DO ABOUT THE PRISON PRIORS. I WOULD
13 LIKE TO HEAR HIS SIDE OF IT.

14 YOU HAVE THE RIGHT TO BE SENTENCED WITHIN TWENTY
15 COURT DAYS. YOUR LAWYER TELLS ME YOU WANT TO WAIVE TIME FOR
16 A SHORT PERIOD OF TIME ANYWAY TO ALLOW US TO DO THAT. I WAS
17 THINKING OF MAYBE JUNE THE 5TH OR THE 12TH -- ACTUALLY, NOT
18 THE 12TH BUT MAYBE THE 19TH.

19 MR. KAPP: THAT'S FINE, YOUR HONOR.

20 THE COURT: WHICH ONE?

21 MR. KAPP: THE 19TH IS FINE.

22 THE COURT: JUNE THE 19TH AT 8:30 IN DEPARTMENT 24
23 AT THE HALL OF JUSTICE. DISCUSSIONS, MR. KAPP AND MR.
24 CHADWICK, WILL BE AT 8:30 IN DEPARTMENT 26 ON THE THIRD
25 FLOOR.

26 MR. HERNANDEZ, -DO YOU HAVE ANY QUESTIONS?

27 THE DEFENDANT: NO, SIR.

28 THE COURT: OKAY. ARE YOU ALL RIGHT? OKAY.

1 SHAKING YOUR HEAD YES. YOU'VE GOT TO SAY SOMETHING HERE ON
2 THE RECORD. SAY YES OR NO. ALL RIGHT. THANK YOU, SIR, FOR
3 SETTLING YOUR CASE. I'LL SEE YOU IN JUNE.

4 THE DEFENDANT: ALL RIGHT.

5 * * *

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA) SS.
3
4
5
6

7 I, LEANNA J. LANE, DO HEREBY CERTIFY THAT THE
8 FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE
9 PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON MAY
10 14, 1996.

11 THAT, I REPORTED THE SAME IN STENOGRAPHY BEING THE
12 QUALIFIED AND ACTING OFFICIAL COURT REPORTER OF THE SUPERIOR
13 COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF
14 SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER HAD THE
15 SAME TRANSCRIBED INTO TYPEWRITING AS HEREIN APPEARS.

16 DATED THIS 14TH DAY OF MAY, 1996.
17
18

19 
20 LEANNA J. LANE, C.S.R.
21 CERTIFICATE NO. 3337
22
23
24
25
26
27
28

EXHIBIT "B"

DECLARATION BY PETITIONER

I Victor Hernandez declare under the penalty of perjury:

- (1) That prior to my plea agreement my attorney explained to me that the District Attorney had offered me a plea agreement which would result in me pleading guilty and getting a prison sentence in which I would serve twenty years and get twenty percent off for good behavior.
- (2) When I entered the court room on the record the trial court took my plea and reminded me that I would be getting twenty percent off for good time credits.
- (3) If I had known at the time of the plea that I could not earn goodtime worktime credits I would have not taken the deal.

I declare under the penalty of perjury that the information I have provided is true and correct.

Victor Hernandez

EXHIBIT E

CALIFORNIA APPELLATE COURTS

Case Information

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Date	Description	Notes
08/11/2006	Petition for a writ of habeas corpus filed.	
09/01/2006	Case fully briefed.	
09/01/2006	Order denying petition filed.	The petition for writ of habeas corpus is denied (P, E, WD)
09/01/2006	Case complete.	
11/01/2006	Record purged - to be shipped to state records center.	



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EXHIBIT F

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

FILED

OCT 27 2006

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY [Signature] DEPUTY

In re) No. 186850
)
VICTOR HERNANDEZ) Order
)
On Habeas Corpus)

VICTOR HERANDEZ ("Petitioner") has filed another petition for a writ of habeas corpus. Petitioner again alleges that he is being denied prison credits in violation of his plea bargain and requests to withdraw his plea.

As explained previously, there is a bar against successive attacks on one's conviction by means of a petition for habeas corpus relief:

It has long been the rule that absent a change in the applicable law or the facts, the court will not consider repeated applications for habeas corpus considering claims previously rejected. [citations] The court has also refused to consider newly presented grounds for relief which were known to the petitioner at the time of a prior collateral attack on the judgment. [citation] The rule was stated clearly in In re Connor, supra, 16 Cal.2d 701, 705: "In this state a defendant is not permitted to try out his contentions piecemeal by successive proceedings attacking the validity of the judgment against him." (In re Clark (1993) 5 Cal.4th 750, 767-768.)

Past California decisions have suggested "that the rules against piecemeal presentation of claims and repetitious petitions are subject to undefined exceptions and that the court may be willing to entertain multiple collateral attacks on a judgment notwithstanding the potential for

1 abusive writ practice." (Id. at 768.) The Clark court found that it was "not persuaded that either
2 [Pen. Code] section 1475 or sound policy mandates or warrants consideration of unjustified
3 successive collateral attacks on a judgment of conviction." (Id. at 769.) Thus, the court
4 concluded that "such petitions may and should be denied." (Id. at 770.) "Before a successive
5 petition will be entertained on its merits the petitioner must explain and justify the failure to
6 present claims in a timely manner in his prior petition or petitions." (Id. at 774.)

7 "A litigant mounting a collateral challenge to a final criminal judgment [must] do so in a
8 timely fashion. By requiring that such challenges be made reasonably promptly, we vindicate
9 society's interest in the finality of its criminal judgments, as well as the public's interest "in the
10 orderly and reasonably prompt implementation of its laws." [citation omitted.] Such timeliness
11 rules serve other salutary interests as well. Requiring a prisoner to file his or her challenge
12 promptly helps ensure that possibly vital evidence will not be lost through the passage of time or
13 the fading of memories. In addition, we cannot overestimate the value of the psychological
14 repose that may come for the victim, or the surviving family and friends of the victim, generated
15 by the knowledge the ordeal is finally over. Accordingly, we enforce time limits on the filing of
16 petitions for writs of habeas corpus in noncapital cases (see, e.g., In re Swain (1949) 34 Cal. 2d
17 300, 304)..." (In re Sanders (1999) 21 Cal. 4th 697, 703.)

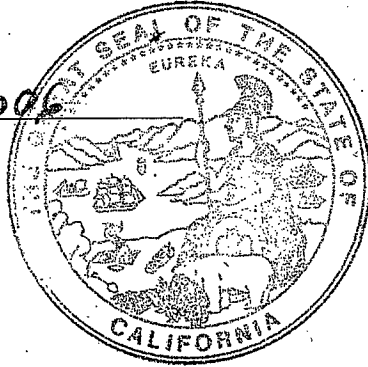
18 In the present case, as explained previously, petitioner previously filed a habeas petition
19 in March 2004 challenging his 1995 plea. Petitioner alleged he had been misadvised as to the
20 length of his sentence by his attorney and wanted to withdraw his plea. The petition was denied
21 where the plea transcripts clearly showed defendant was told he could receive 25 years to life.
22 At no point in the habeas petition to withdraw his plea did petitioner challenge his eligibility for
23 prison credits. Petitioner cannot do so now. Not only is the present petition an impermissible
24 successive attack, but it is also untimely as it is being brought over 11 years since his plea.
25 Petitioner still fails to give any explanation as to why the claim was not brought previously.

1 There is no adequate explanation showing that petitioner did not know that he was not earning
2 credits until this year. Petitioner further alleges that he did not bring the March 2004 petition.
3 However, petitioner's signature is on the petition.

4 Accordingly, the petition is DENIED.

5
6 Date:

25 Oct 2006



7
8 PAUL BERNAL
9 JUDGE OF THE SUPERIOR COURT

10 Cc: Petitioner
11 District Attorney
12 Research

WIC

MC-275

Name Victor HernandezAddress P.V.S.P. / D3-128LP.O. Box - 8504Coalinga, CA. 93210CDC or ID Number K-31659**FILED**

SEP 22 2006

SANTA CLARA SUPERIOR COURT**FOR THE STATE OF CALIFORNIA**

(Court)

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
By [Signature] Deputy
S. Chua

Victor Hernandez

Petitioner

vs.

Respondent

JAMES YATES WARDEN**PETITION FOR WRIT OF HABEAS CORPUS**No. 1816850

(To be supplied by the Clerk of the Court)

INSTRUCTIONS — READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

Page one of six

This petition concerns:

- ☐ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify):

Victor Hernandez

Your name:

P.V.S.P.

Where are you incarcerated?

Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Possession of PCP/ Under the Influence

- b. Penal or other code sections: P.C. 11377(A) P.C. 1170.12

- c. Name and location of sentencing or committing court: Santa Clara Superior Court

- d. Case number: Case 186850

- e. Date convicted or committed: May 14, 1996

- f. Date sentenced:

- g. Length of sentence: .25 years to life

- h. When do you expect to be released?

- i. Were you represented by counsel in the trial court?
- ☐
- Yes.
- ☐
- No. If yes, state the attorney's name and address:
-
- Santa Clara Public Defenders Office J.J. Kapp

What was the LAST plea you entered? (check one)

- ☐
- Not guilty
- ☒
- Guilty
- ☐
- No/0 Contendere
- ☐
- Other:

you pleaded not guilty, what kind of trial did you have?

- ☐
- Jury
- ☐
- Judge without a jury
- ☐
- Submitted on transcript
- ☐
- Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

SEE ATTACHED MEMORANDUM

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

SEE ATTACHED MEMORANDUM

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

7. Ground 2 or Ground _____ (if applicable):

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

Did you seek review in the California Supreme Court? ☐ Yes. ☐ No. If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

i. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

j. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed ☒ other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

3. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

Was advised by institutional records that I was not able to

earn good time work time credits as promised as a condition of my guilty plea.

Are you presently represented by counsel? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☐ No. If yes, explain:

If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.



(SIGNATURE OF PETITIONER)

Victor Hernandez K-31695
P.V.S.P. Fac D-3-128-L
P.O. Box 8504
Coalinga Ca 93210

FILED

SEP 22 2006

SANTA CLARA SUPERIOR COURT
FOR THE STATE OF CALIFORNIA

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
By S. Chua Deputy

IN re Victor Hernandez

MEMORANDUM OF POINTS AND AUTHORITIES
APPEAL FROM THE HONORABLE PAUL BERNAL JUDGE OF THE SANTA CLARA
SUPERIOR COURT.

STATEMENT OF THE CASE

Petitioner requests this Court please take Judicial Notice of the fact that the petitioner is requesting appointment of legal counsel because he is unable to read or write at a level to fully understand these proceedings. Petitioners exhibit A is a copy of his most recent tabe results which show his reading score is 3.6 and language score of 2.9.

On 5-10-06 petitioner sent a request to the inmate records office after a conversation with another inmate regarding time earning credits. The petitioner was sent a copy of a flyer that had been posted in the law library advising inmates of People V. Stofle 1996 45 Cal App 4th 417 advising inmates of zero credit ability.

No additional effort was made to contact inmates who could not

1 read or write and petitioner was never notified of any change in
2 the law.

3 THE SUPERIOR COURT BASED ITS OPINION ON THE FACT
4 PETITIONER HAD PREVIOUSLY FILED A PETITION FOR RELIEF.

5 The Superior Court reasoned that the petitioner had filed a
6 petition for relief in March of 2004 and did not mention his claim
7 now presented. The petitioner urges that he never filed the habeas
8 petition and that it was somehow placed in the record. In addition
9 it is not his hand writing nor did he authorize it.

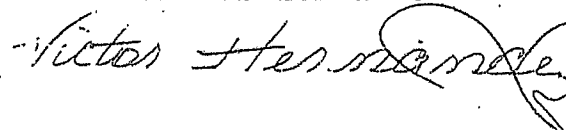
10 The petitioner urges that his alleged 2004 habeas petition
11 is of no interest to the matter before the court because there
12 was no response to his formal request to the department of Correct-
13 ions until 5-12-06. Petitioner could not have raised this claim
14 because he was unaware of the change in the law.

15 The petitioner has asked this court to appoint counsel to
16 represent him because it appears that someone is taking great
17 advantage of the fact that he cannot read and write at a level to
18 present his claims to the court. While petitioner has had some
19 help in presenting this matter to the court because of need for
20 a complete investigation he is requesting counsel be appointed. He
21 has provided his most recent test scores to confirm that he is
22 unable to understand the complex proceedings before the court.
23 I Victor Hernandez declare under the penalty of perjury that the
24 information I have provided is true and correct.

25
26 Filed this day of 2006

27 Victor Hernandez

28



VICTOR ROGER HERNANDEZ K-31659
P.V.S.P. Fac D-3-130-L
P.O. Box 8504
Coalinga Ca 93210

FILED

SEP 22 2006

SANTA CLARA SUPERIOR COURT
FOR THE STATE OF CALIFORNIA

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
By S. Chua Deputy

In re Victor Roger Hernandez
on habeas corpus

PETITION FOR WRIT OF Habeas
Corpus.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION.

To; The Honorable Judge Presiding Judge.

TO: THE DISTRICT ATTORNEY IN AND FOR THE COUNTY OF SANTA CLARA.

Comes Now petitioner and defendant Victor Hernandez whom urges this court to grant an informal order to show cause on the grounds that his criminal sentence is in violation of clearly established State and Federal law.

The petitioner urges that he was induced to take a guilty plea with knowingly false and incorrect information provided by his trial counsel and the Judge and prosecutor. The prosecution intentionally remained silent when the Judge as a condition of petitioner's guilty plea was advised that he would only have to serve twenty years and would be eligible for good time and work time credits.

STATEMENT OF THE CASE

On May 14, 1996 the petitioner was sentenced to a California prison term of twenty five years to life under the Three Strikes law and the court went through a series of advisements to petitioner.

1 (SEE EXHIBIT "A" SENTENCING TRANS P-13 L-18-28)

2 THE COURT:

3 WELL YOU'RE ENTITLED TO CREDIT FOR TIME SERVED HERE SINCE
4 YOU WERE ARRESTED ACCORDING TO THE LAW AND YOU WILL BE
5 ELIGIBLE POSSIBILTY DEPENDING ON WHERE YOU ARE HOUSED IN
6 THE STATE DEPARTMENT OF CORRECTIONS FOR GOOD TIME AND WORK
7 TIME CREDITS. But because of the Three Strikes law you don't
8 GET FIFTY PERCENT OFF YOU ONLY GET TWENTY PERCENT OFF. Do
9 you understand?

10 Defendant: Yes

11 THE COURT:

12 THE COURT CAN'T PROMISE WHERE YOU ARE GOING TO BE HOUSED
13 UP THERE AND IF YOU REFUSE TO WORK OR FOLLOW THE RULES THEN
14 THE'll take that away and you'll do the entire amount. Do
15 YOU UNDERSTAND.

16 DEFENDANT Yes

17 The petitioner urges that he would not have entered a plea of
18 guilty if he was not going to get five years off for good time work
19 time credits. All state prisoner's are afforded the oppertunity to
20 earn work time credits. The petitioner urges that the totality in all
21 of the courts VOIR DIRE advisements that make the good time credits
22 part of the contract.

23 ARGUMENT

24 CRIMINAL LAW 159:

25 While no bargain or agreement can divest the court of its
26 sentencing discretion it inherently possesses, a Judge who has
27 accepted a plea bargain, is bound to impose a sentence within
28 the limits of the bargain. A plea bargain agreement is in sum
and essence a contract between the defendant and the prosecutor
to which the court consents to be bound. Should the court
consider the plea bargain to be unacceptable its remedy is to
reject it not violate it directly or indirectly.

Clearly the prosecutor was aware of the law at the time of the

1 Sentencing hearing and could have objected to the court making the
2 ability to earn twenty percent work and conduct credits an element
3 of the plea agreement.

4 The petitioner contends that the United States Constitution
5 insures that Boykin/Tahl rights holds convictions based on a plea
6 of guilty must also be supported by a record of the plea that
7 contains evidence that accused was advised of the right to a jury
8 trial, to confront witnesses, and against self incrimination and that
9 a knowingly and intelligent waiver of those rights. The record must
10 also show that the defendant knew both the nature of the charge and
11 and the consequences of entering a plea of guilty. Boykin V. Alabama
12 (1969) 395 U.S 238 23 L Ed.; In re Tahl (1969) 1 C3d 122, 132 81 CR
13 577, 581; People V. Sumstine (1984).

14 As in People V. Bonwit 219 Cal Rptr 297 stated one of the many
15 representations made to the petitioner was the courts own improper
16 and illusory idea that any California State prison could give out
17 twenty percent good time work time credits. See also People V DeVaughn
18 135 Cal Rptr 786 holding power beyond the authority of the trial court
19 improperly induced petitioner's guilty plea. Guilty plea must be
20 reversed because defendants were induced by misrepresentations.

21 A defendant sentenced with two or more prior strikes receives
22 no good time work time credits. (See In re Cervera (2001) 24 (4th)
23 1073, 103 CR2d 762.

24 Petitioner urges that he would not have taken a plea and would
25 have went to trial had he been aware that he would have to serve 25
26 years before the parole board could even consider him for parole.

27 A review of the law makes it clear that a defendant serving a
28

1 prison sentence under the California Three Strikes Law for his
2 third strike has been deemed not to be lawfully authorized to
3 earn good time work time credits.

4 The petitioner has worked on a prison job in a good time
5 earning capacity for the last ten years. (See Exhibit "B" petitioner's
6 declaration.

7 PETITIONER IS UNABLE TO PRESENT DEFENSE WITNESSES
8 FOR A NEW TRIAL AND IS PLACED AT A DISADVANTAGE

9 The petitioner urges that he is now placed at a disadvantage
10 because the prosecutor and his trial counsel allowed the trial court
11 to improperly advise the petitioner of conditions of his contract
12 guilty plea which were clearly illusory.

13 The petitioner contends that this Constitutional error was the
14 cause of the State of claimed misrepresentation made to the petitioner

15
16 PRAYER FOR RELIEF

17 Petitioner prays the court grant his petition for writ of
18 Habeas Corpus on the grounds that the trial court mislead and advised
19 the petitioner of time credits which he was not entitled to obtain
20 as a condition of his contract agreement with the court.

21
22 Petitioner urges he would not have gave up his right to self
23 incrimination if he had known that he could not earn good time work
24 time credits.

25 Victor Roger Hernandez

26 *Victor Hernandez*
27

~~Exhibit~~ "A"

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA CLARA

3 BEFORE THE HONORABLE WILLIAM F. MARTIN, JUDGE

4 DEPARTMENT 3

5 ---000---

COPY

7 THE PEOPLE OF THE STATE OF]
8 CALIFORNIA,]

PLAINTIFF,]

9 VS.]

10 VICTOR ROGER HERNANDEZ,]
11 DEFENDANT.]

CASE NO. 186850

CHANGE OF PLEA

12 ---000---

13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 HELD ON MAY 14, 1996

16
17
18
19
20
21 A P P E A R A N C E S:

22 FOR THE PEOPLE:

GEORGE CHADWICK, D.D.A.

23 FOR THE DEFENDANT:

J.J. KAPP, D.P.D.

24 REPORTED BY:

25 LEANNA JANE LANE, C.S.R.
26 CERTIFICATE NO. 3337
27
28

1 SAN JOSE, CALIFORNIA

MAY 14, 1996

2
3 PROCEEDINGS:

4 THE COURT: THIS IS THE CASE OF PEOPLE VERSUS
5 VICTOR HERNANDEZ WHO I RECOGNIZE. HE'S HERE DRESSED OUT, IN
6 CUSTODY, REPRESENTED BY?

7 MR. KAPP: J.J. KAPP, YOUR HONOR.

8 MR. CHADWICK: GEORGE CHADWICK ON BEHALF OF THE
9 PEOPLE.

10 (WHEREUPON DISCUSSION WAS HAD, NOT TRANSCRIBED.)

11 THE COURT: MR. HERNANDEZ, IF YOU WANT TO SETTLE
12 THE CASE, MY UNDERSTANDING FROM MR. CHADWICK IS THAT HE IS
13 OFFERING TO DISMISS THE ROBBERY AND THE PETTY THEFT WITH A
14 PRIOR CHARGE, COUNTS 1 AND 2, IF YOU PLEAD EITHER GUILTY OR
15 NO CONTEST TO COUNT 3 WHICH IS THE POSSESSION OF PCP CHARGE
16 AND COUNT 4, THE MISDEMEANOR, UNDER THE INFLUENCE CHARGE AND
17 ADMIT THE STRIKES THAT ARE CHARGED HERE AND THE SERIOUS
18 FELONY PRIORS, TOO --

19 MR. CHADWICK: NO.

20 THE COURT: THEY DON'T HAVE ANY AFFECT HERE?

21 MR. CHADWICK: CORRECT, YOUR HONOR. PEOPLE WOULD
22 DISMISS THOSE. PEOPLE WOULD ASK MR. HERNANDEZ TO ADMIT ALL
23 OF THE PRISON PRIORS AND LEAVE IT TO THE COURT'S DISCRETION
24 AS TO WHETHER TO IMPOSE THEM. THE ONLY -- ALL THE PEOPLE
25 INTEND TO DO IS DISMISS COUNTS 1 AND 2 IF MR. HERNANDEZ
26 ADMITS THE REST OF THE INFORMATION THAT APPLIES TO THIS
27 CASE.

28 THE COURT: SO THEY ARE OFFERING TO DISMISS COUNTS

*nothing
said @
R/S*

1 1 AND 2 IF YOU PLEAD EITHER GUILTY OR NO CONTEST TO COUNTS 3
2 AND 4 AND ADMIT ALL THE OTHER ALLEGATIONS THAT ARE CHARGED
3 HERE. AND THE OTHER ALLEGATIONS AND THE MOST IMPORTANT ONES
4 ARE THEY HAVE TWO STRIKES CHARGED WHICH WOULD BE REQUIRE
5 TWENTY-FIVE YEARS TO LIFE RIGHT THERE SIMPLY BECAUSE OF THE
6 FELONY POSSESSION CHARGE AND THEN THEY'VE GOT SOME SERIOUS
7 FELONY CHARGES HERE WHICH, IF YOU GOT CONVICTED OF THE
8 ROBBERY WOULD, ADD FIVE YEARS FOR EACH ONE OF THOSE. BUT
9 BECAUSE THE ROBBERY IS GETTING DISMISSED THEY DO NOT APPLY
10 EVEN THOUGH YOU'RE ADMITTING THEM.

11 THEN YOU HAVE WHAT LOOKS LIKE FOUR PRISON PRIORS
12 CHARGED HERE. DOES THAT SOUND RIGHT TO YOU?

13 MR. CHADWICK: YES.

14 MR. KAPP: YES.

15 THE COURT: THEY'RE ASKING YOU TO ADMIT THOSE AND
16 IN THEORY I COULD GIVE YOU ONE YEAR FOR EACH OF THOSE OR AN
17 ADDITIONAL FOUR YEARS ON TOP OF THE TWENTY-FIVE YEARS TO
18 LIFE AT THE TIME OF SENTENCING IF I THOUGHT IT WAS
19 APPROPRIATE.

20 MR. CHADWICK: YOUR HONOR, PEOPLE MOVE TO STRIKE
21 WILL MOVE TO STRIKE THE FIRST PRISON PRIOR UNDER THE PEOPLE
22 VERSUS JONES CASE. I'M NOT CONVINCED AT THIS TIME THAT
23 THAT'S AN APPROPRIATE DUEL USE OF A PRISON PRIOR. SO WE
24 WOULD ONLY ASK HIM TO ADMIT THE LAST THREE.

25 THE COURT: ALL RIGHT. SO IN ESSENCE, YOU ARE
26 FACING AT LEAST TWENTY-FIVE YEARS TO LIFE, POSSIBLY
27 TWENTY-EIGHT YEARS TO LIFE DEPENDING ON YOUR PROBATION
28 REPORT AND DISCUSSIONS WE HAVE AT THE TIME OF YOUR

Shows
No
T/B

1 SENTENCING.

2 DO YOU UNDERSTAND THAT PROMISE TO YOU? YOU HAVE
3 TO ANSWER OUT LOUD.

4 THE DEFENDANT: I DO.

5 THE COURT: MY QUESTION TO YOU IS: HAS ANYONE
6 PROMISED ANYTHING ELSE BESIDES THAT TO YOU?

7 THE DEFENDANT: NO.

8 MR. KAPP: YOUR HONOR, CAN I STOP A MINUTE?

9 THE COURT: YES.

10 MR. KAPP: WOULD IT BE ACCURATE TO SAY THAT THE
11 COURT HAS INDICATED THAT AT LEAST PRELIMINARILY THAT IF MR.
12 HERNANDEZ IS CONVICTED OF THE POSSESSION, HAVING ADMITTED
13 THE TWO STRIKE PRIORS AND THE THREE PRISON PRIORS, THAT THE
14 COURT WOULD BE INCLINED TO IMPOSE THE MANDATORY SENTENCE OF
15 TWENTY-FIVE TO LIFE, WOULD THAT BE --

16 THE COURT: I THINK THAT'S WHERE I WOULD BE
17 STARTING.

18 MR. CHADWICK: PEOPLE ARE NOT GOING TO ASK THE
19 COURT TO IMPOSE THE THREE, ANY OF THE THREE PRISON PRIORS.

20 THE COURT: I HAVE TO ADVISE YOU TECHNICALLY THAT
21 YOU'RE EXPOSED TO THOSE THREE PRIORS BECAUSE THEY WANT YOU
22 TO ADMIT THEM HERE. BUT IN MY FEELING ABOUT THIS CASE AND
23 YOUR HISTORY, I THINK TWENTY-FIVE YEARS TO LIFE IS
24 SATISFACTORY UNLESS THERE'S SOMETHING IN YOUR PROBATION
25 REPORT THAT COMES UP THAT WE DON'T KNOW ABOUT RIGHT NOW. DO
26 YOU UNDERSTAND ALL THAT, MR. HERNANDEZ?

27 THE DEFENDANT: YES, SIR.

28 THE COURT: SO, THE FIRST QUESTION AGAIN IS: HAS

Shows
strong
15
25 to L
but
not T/B

how
about
C. Hernandez?

1 ANYONE PROMISED YOU ANYTHING ELSE OTHER THAN THAT THE
2 DISTRICT ATTORNEY IS GOING TO DISMISS COUNTS 1 AND 2, THE
3 ROBBERY AND THE PETTY THEFT WITH A PRIOR, AND THEY'RE ALSO
4 GOING TO DISMISS THE FIRST OF THE PRISON PRIORS IF YOU PLEAD
5 GUILTY OR NO CONTEST TO COUNTS 3 AND 4, POSSESSION OF PCP
6 AND THE MISDEMEANOR, UNDER THE INFLUENCE, AND ADMIT ALL THE
7 STRIKES AND ALL THE OTHER PRISON PRIORS AND SERIOUS FELONIES
8 THAT ARE ALLEGED; IS THAT RIGHT?

THE DEFENDANT: YES, SIR.

THE COURT: NOBODY HAS PROMISED YOU ANYTHING ELSE
11 BESIDES THAT, IS THAT CORRECT?

12 THE DEFENDANT: NO.

13 THE COURT: IS THAT CORRECT?

14 THE DEFENDANT: YES.

15 THE COURT: HAS ANYONE THREATENED YOU OR ANYONE
16 CLOSE TO YOU TO MAKE YOU CHANGE YOUR PLEA HERE AND SETTLE
17 THE CASE?

18 THE DEFENDANT: NO.

19 THE COURT: ARE YOU SETTLING THE CASE THEN OF YOUR
20 OWN FREE WILL?

21 THE DEFENDANT: YES.

22 THE COURT: YOU'RE IN JAIL NOW, IS THAT RIGHT,
23 SIR?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: AND WHERE ARE YOU HOUSED?

26 THE DEFENDANT: 7-B.

27 THE COURT: HAVE YOU TAKEN ANY DRUGS, MEDICINE,
28 NARCOTICS OR ALCOHOL IN THE LAST TWO DAYS?

No
TIB
@ UH
Question
re:
promises/
conditions
@ the plea

1 THE DEFENDANT: YES, I HAVE.

2 THE COURT: WHAT HAVE YOU TAKEN?

3 THE DEFENDANT: THORAZINE.

4 THE COURT: ARE YOU ALSO USING INSULIN?

5 THE DEFENDANT: YES.

6 THE COURT: AND HOW LONG HAVE YOU BEEN TAKING
7 THORAZINE?

8 THE DEFENDANT: FOR ABOUT TWO, THREE DAYS ALREADY.

9 THE COURT: SAY THAT AGAIN?

10 THE DEFENDANT: TWO, THREE DAYS.

11 THE COURT: YES?

12 THE DEFENDANT: YES.

13 THE COURT: AND IS THAT WITH A DOCTOR'S ORDERS?

14 THE DEFENDANT: YES.

15 THE COURT: WHY ARE YOU TAKING THE THORAZINE?

16 THE DEFENDANT: I'M HEARING VOICES AT NIGHT.

17 THE COURT: DOES THE THORAZINE HELP YOU IN REGARD
18 TO THE VOICES?

19 THE DEFENDANT: NO.

20 THE COURT: DOES THE THORAZINE MAKE IT DIFFICULT
21 FOR YOU TO THINK AND UNDERSTAND?

22 THE DEFENDANT: NO, IT'S FOR ME TO JUST RELAX ME
23 AND MAKE ME FALL ASLEEP.

24 THE COURT: IS THE THORAZINE AFFECTING YOUR
25 ABILITY TO UNDERSTAND WHAT I'M SAYING HERE TODAY?

26 THE DEFENDANT: NO.

27 THE COURT: YOU'RE UNDERSTANDING EVERYTHING I SAY?

28 THE DEFENDANT: YES.

1 THE COURT: IF I SAY OR IF ANYBODY SAYS ANYTHING
2 THAT YOU DON'T UNDERSTAND, WILL YOU PROMISE TO RAISE YOUR
3 HAND AND ASK A QUESTION?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ARE YOU THINKING CLEARLY THEN HERE
6 TODAY?

7 THE DEFENDANT: YES.

8 THE COURT: HOW LONG HAS MR. KAPP BEEN YOUR LAWYER
9 ROUGHLY, HOW MANY MONTHS?

10 THE DEFENDANT: ABOUT NINE AND A HALF.

11 THE COURT: BASICALLY, PRETTY MUCH MAYBE WITHIN A
12 MONTH OR SO AFTER YOU GOT ARRESTED, WAS HE YOUR LAWYER?

13 THE DEFENDANT: NO.

14 THE COURT: YOU GOT ARRESTED -- DID YOU GET
15 ARRESTED IN AUGUST OF LAST YEAR?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: MR. KAPP, WHEN DID YOU FIRST COME INTO
18 THE PICTURE IN THIS CASE?

19 MR. KAPP: SEPTEMBER 12TH IT LOOKS LIKE.

20 THE COURT: ALL RIGHT. SO ABOUT A MONTH AFTER YOU
21 GOT ARRESTED MR. KAPP GOT APPOINTED TO THE CASE. IS THAT
22 RIGHT?

23 THE DEFENDANT: YES.

24 THE COURT: AND HAS HE TALKED TO YOU BEFORE TODAY,
25 HAS MR. KAPP GONE OVER AND TALKED TO YOU BEFORE TODAY?

26 THE DEFENDANT: YEAH.

27 THE COURT: HAS HE TAKEN THE TIME TO EXPLAIN TO
28 YOU WHAT THE DISTRICT ATTORNEY HAS TO PROVE IN ORDER TO

1 CONVICT YOU OF THE CHARGED CRIMES IN THE INFORMATION, HAS HE
2 GONE OVER THOSE THINGS WITH YOU?

3 THE DEFENDANT: YES.

4 THE COURT: HAS HE ALSO GONE OVER ANY DEFENSES YOU
5 MIGHT HAVE, ESPECIALLY TO SOME OF THE CHARGES AT LEAST?

6 THE DEFENDANT: YES.

7 THE COURT: AND HAS HE ALSO EXPLAINED TO YOU YOUR
8 STATUTORY AND YOUR CONSTITUTIONAL RIGHTS, HAS HE GONE OVER
9 THOSE WITH YOU?

10 THE DEFENDANT: YES, SIR.

11 THE COURT: ARE YOU SATISFIED WITH MR. KAPP'S
12 LEGAL ADVICE?

13 THE DEFENDANT: YES.

14 THE COURT: MR. KAPP, DO YOU UNDER THE
15 CIRCUMSTANCES CONCUR WITH THE RESOLUTION OF THE CASE IN THIS
16 FASHION?

17 MR. KAPP: I DO, YOUR HONOR. BECAUSE AFTER
18 ADVISING MR. HERNANDEZ OF ALL THE POSSIBILITIES THAT I SAW
19 AND THE OPTIONS THAT HE HAD, IT IS HIS DECISION THAT HE
20 WANTS TO DO THIS. AND FOR THAT REASON IT'S NOT BECAUSE I
21 AGREE WITH THE LAW THAT'S APPLIED AND IT'S NOT BECAUSE I
22 THINK THAT TWENTY-FIVE TO LIFE IS A FAIR SENTENCE.

23 THE COURT: BUT CONSIDERING THE OTHER ALTERNATIVES
24 IF HE WERE TO GET CONVICTED AFTER TRIAL -- I THINK SOMEBODY
25 SAID SIXTY YEARS TO LIFE, SOMETHING REALLY OUTRAGEOUS,
26 TWENTY-FIVE YEARS TO LIFE IS SOMETHING THAT YOU THINK IS A
27 BETTER OPTION FOR HIM AT THIS TIME.

28 MR. KAPP: WELL, I THINK THAT HE IS PERFECTLY ABLE

1 TO DECIDE IF THAT'S THE BETTER OPTION AND I RESPECT HIS
2 DECISION TO DO THAT.

3 THE COURT: ALL RIGHT. ARE YOU RECOMMENDING THAT
4 HE NOT SETTLE THE CASE?

5 MR. KAPP: I'M NOT. I'M NOT RECOMMENDING THAT HE
6 NOT SETTLE THE CASE AND I'VE SIMPLY LAID OUT THE OPTIONS. I
7 TOLD HIM TO GO BACK OVER THE NOON HOUR AND THINK ABOUT IT
8 AND THIS IS THE DECISION HE'S MADE AND SO --

9 THE COURT: AND YOU RESPECT THAT.

10 MR. KAPP: I RESPECT IT AND IN THAT SENSE I
11 CONCUR.

12 THE COURT: VERY WELL.

13 MR. HERNANDEZ, THIS DOES NOT APPLY TO YOU BUT I'M
14 REQUIRED BY LAW TO SAY THIS. IF YOU ARE NOT A CITIZEN,
15 CONVICTION OF A FELONY CAN RESULT IN DEPORTATION, DENIAL OF
16 NATURALIZATION OR REFUSAL OF RE-ENTRY INTO THE UNITED
17 STATES. THAT DOES NOT APPLY IF YOU ARE A CITIZEN. DO YOU
18 UNDERSTAND THAT?

19 THE DEFENDANT: YEAH.

20 THE COURT: AND I AM ALSO REQUIRED TO TELL YOU THE
21 MAXIMUM PUNISHMENT YOU COULD RECEIVE UNDER THIS SETTLEMENT.
22 YOU MUST RECEIVE TWENTY-FIVE YEARS TO LIFE BECAUSE OF THE
23 TWO STRIKES THAT YOU WILL BE ADMITTING HERE TODAY AFTER THE
24 CONVICTION OF THE FELONY POSSESSION CHARGE AND YOU COULD
25 RECEIVE AN ADDITIONAL THREE YEARS FOR ONE -- FOR EACH OF THE
26 THREE PRISON PRIORS THAT YOU WILL BE ADMITTING FOR A MAXIMUM
27 OF UP TO TWENTY-EIGHT YEARS TO LIFE. DO YOU UNDERSTAND THE
28 THEORETICAL MAXIMUM?

T/B?
or
Butler
arguably

1 THE DEFENDANT: YES, SIR.

2 THE COURT: UNDERSTAND THE MINIMUM OF TWENTY-FIVE
3 YEARS TO LIFE?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: I'M FORGETTING HOW LONG YOU WOULD BE
6 ON PAROLE ON A LIFE SENTENCE. IS IT FIVE YEARS? ANYBODY
7 KNOW?

8 THE DEFENDANT: I DON'T KNOW.

9 MR. CHADWICK: MAXIMUM FIVE YEARS FOR LIFE CRIMES,
10 CAN BE EXTENDED TO SEVEN. LIFE PAROLE FOR MURDER IS WHAT IT
11 SAYS HERE.

12 MR. KAPP: I BELIEVE THAT THAT'S CORRECT.

13 THE COURT: YOU CAN BE PLACED ON PAROLE ONCE YOU
14 GET OUT OF PRISON FOR UP TO FIVE YEARS. IF YOU VIOLATE THE
15 RULES OF PAROLE, THEY CAN HAVE A HEARING AND RETURN YOU TO
16 PRISON FOR UP TO ONE YEAR FOR EACH VIOLATION OF PAROLE --
17 AND YOU ALREADY KNOW THAT BECAUSE YOU'VE BEEN ON PAROLE
18 BEFORE -- AND EXTEND YOUR PAROLE SUPERVISION UP TO SEVEN
19 YEARS MAXIMUM BECAUSE THIS IS A TWENTY-FIVE TO LIFE CASE.
20 DO YOU UNDERSTAND THAT?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: THERE'S A TWENTY THOUSAND DOLLAR
23 MAXIMUM FINE, THERE'S A TWO HUNDRED DOLLAR MINIMUM FINE THAT
24 I MUST IMPOSE EVEN THOUGH YOU'RE GOING TO PRISON. DO YOU
25 UNDERSTAND THAT?

26 THE DEFENDANT: YES.

27 THE COURT: I BELIEVE UNDER 11377 YOU ARE REQUIRED
28 TO REGISTER AS A NARCOTICS OFFENDER. FAILURE TO DO THAT

1 WOULD BE A NEW CRIME AND THEY COULD PROSECUTE YOU FOR
2 FAILURE TO REGISTER AS A NARCOTICS OFFENDER ONCE YOU GET OUT
3 OF PRISON. DO YOU UNDERSTAND THAT?

4 THE DEFENDANT: YES.

5 THE COURT: THERE IS AN A NINETY DAY MINIMUM ON
6 THE UNDER THE INFLUENCE OF PCP CHARGE WHICH IS THE LEAST OF
7 YOUR PROBLEMS BUT YOU UNDERSTAND THAT?

8 THE DEFENDANT: YES.

9 THE COURT: YOU WILL HAVE, OF COURSE, ANOTHER
10 FELONY CONVICTION ON YOUR RECORD -- YOU'VE GOT A LOT OF THEM
11 ALREADY -- AND YOU WILL HAVE ANOTHER PRISON PRIOR ON YOUR
12 RECORD AND YOU'VE GOT A FEW OF THOSE ALREADY AS A RESULT OF
13 SETTling THE CASE HERE TODAY. DO YOU UNDERSTAND THAT?

14 THE DEFENDANT: YES.

15 THE COURT: DID YOU WANT TO PLEAD GUILTY OR NO
16 CONTEST HERE TODAY?

17 THE DEFENDANT: GUILTY.

18 THE COURT: WHEN YOU PLEAD GUILTY TO THE TWO
19 CHARGES, COUNTS 3 AND 4, AND ALSO WHEN YOU ADMIT THE STRIKES
20 ARE TRUE AND VALID AND WHEN YOU ADMIT THE PRISON PRIORS ARE
21 TRUE AND VALID, THE THREE OF THEM THAT YOU'RE GOING TO
22 ADMIT, WHEN YOU DO ALL THOSE THINGS YOU'LL BE GIVING UP
23 IMPORTANT RIGHTS. DO YOU UNDERSTAND THAT?

24 THE DEFENDANT: YES.

25 THE COURT: THE FIRST RIGHT I WANT TO GO OVER IS
26 YOUR RIGHT TO A JURY TRIAL. YOU HAVE THE RIGHT ON THE
27 CHARGES AND ON THE PRIORS AND ON THE STRIKES TO HAVE A JURY
28 TRIAL. DO YOU UNDERSTAND THAT?

1 THE DEFENDANT: YES.

2 THE COURT: AND YOU GIVE IT UP SO YOU CAN SETTLE
3 THE CASE, PLEAD GUILTY AND ADMIT THE STRIKES AND THE PRIORS?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: NOW, IF YOU DIDN'T WANT TO HAVE A JURY
6 TRIAL YOU COULD HAVE A JUDGE OR A COURT TRIAL WITHOUT A JURY
7 AND IF THE DISTRICT ATTORNEY GAVE UP THEIR RIGHT TO A JURY
8 TRIAL YOU WOULD HAVE A RIGHT TO A COURT TRIAL. DO YOU
9 UNDERSTAND THAT RIGHT?

10 THE DEFENDANT: YES.

11 THE COURT: DO YOU GIVE IT UP ALSO SO YOU CAN
12 PLEAD GUILTY AND ADMIT THE STRIKES AND THE PRIORS?

13 THE DEFENDANT: YES.

14 THE COURT: YOU HAVE THE RIGHT TO REMAIN SILENT.
15 IF YOU SAY THE WORD GUILTY, YOU ADMIT THE STRIKES ARE TRUE,
16 IF YOU ADMIT THE PRISON PRIORS ARE TRUE, YOU ARE CONVICTING
17 YOURSELF, YOU'RE INCRIMINATING YOURSELF AND YOU'RE GIVING UP
18 THAT RIGHT. DO YOU UNDERSTAND THAT?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: DO YOU GIVE IT UP SO WE CAN SETTLE THE
21 CASE?

22 THE DEFENDANT: YES.

23 THE COURT: YOU HAVE THE RIGHT TO CONFRONT AND
24 CROSS-EXAMINE THE WITNESSES AND THE EVIDENCE AGAINST YOU.
25 THAT MEANS YOU COULD SIT THERE AND SEE THE WITNESSES, LISTEN
26 TO THEM TESTIFY AND HAVE YOUR LAWYER ASK THEM QUESTIONS
27 UNDER OATH ABOUT WHAT THEY SAY YOU DID WRONG. DO YOU
28 UNDERSTAND THAT RIGHT?

1 THE DEFENDANT: YES.

2 THE COURT: AND DO YOU GIVE UP THAT RIGHT?

3 THE DEFENDANT: YES.

4 THE COURT: AND FINALLY, YOU HAVE THE RIGHT TO
5 DEFEND YOURSELF. THAT MEANS YOU COULD TESTIFY AND TELL US
6 YOUR SIDE AND YOU COULD SUBPOENA UNDER COURT ORDER WITNESSES
7 AND EVIDENCE INTO COURT TO TESTIFY FOR YOUR SIDE. DO YOU
8 UNDERSTAND THAT RIGHT?

9 THE DEFENDANT: YES.

10 THE COURT: AND DO YOU GIVE IT UP SO WE CAN SETTLE
11 THE CASE?

12 THE DEFENDANT: YES.

13 THE COURT: MR. CHADWICK, DO YOU HAVE ANY OTHER
14 ADDITIONAL SUGGESTED VOIR DIRE, SIR?

15 MR. CHADWICK: SOME COURTS DON'T LIKE THIS
16 QUESTION AT THIS STAGE BUT I ASK THAT HE BE ADVISED OF
17 CREDITS.

18 THE COURT: WELL, YOU'RE ENTITLED TO CREDIT FOR
19 TIME SERVED HERE SINCE YOU WERE ARRESTED, ACCORDING TO THE
20 LAW, AND YOU WILL BE ELIGIBLE POSSIBLY, DEPENDING ON WHERE
21 YOU'RE HOUSED IN THE STATE DEPARTMENT OF CORRECTIONS, FOR
* 22 GOOD TIME AND WORK TIME CREDIT. BUT BECAUSE OF THE THREE
23 STRIKES LAW, YOU DON'T GET FIFTY PERCENT OFF, YOU ONLY GET
24 TWENTY PERCENT OFF. DO YOU UNDERSTAND THAT?

25 THE DEFENDANT: YES.

26 THE COURT: WE CAN'T PROMISE WHERE YOU'RE GOING TO
27 BE HOUSED UP THERE, AND IF YOU REFUSE TO WORK OR FOLLOW THE
28 RULES, THEN THEY'LL TAKE THAT AWAY AND YOU'LL DO THE ENTIRE

1 AMOUNT. DO YOU UNDERSTAND THAT?

2 THE DEFENDANT: YES.

3 MR. CHADWICK: PEOPLE ARE NOT ASKING FOR
4 RESTITUTION TO THE VICTIM BECAUSE I DON'T THINK SHE SUFFERED
5 ANY ECONOMIC LOSSES.

6 THE COURT: WELL, IN THE PRELIM TRANSCRIPT SHE GOT
7 A ONE-INCH GASH OUT OF THIS THING.

8 MR. CHADWICK: I DON'T HAVE ANY EVIDENCE WITH ME
9 THAT WE COULD REDUCE TO A DOLLAR FIGURE THAT SHE RECEIVE
10 MEDICAL TREATMENT.

11 THE COURT: JUST TO BE SAFE, EVEN THOUGH YOU'RE
12 GOING TO PRISON, IT'S POSSIBLE, IN FACT IT'S LIKELY THAT I
13 WILL ORDER YOU TO PAY RESTITUTION TO THE VICTIM FOR ANY
14 DAMAGE, LOSS OR HARM THAT YOU CAUSED HERE AS A RESULT OF
15 THIS EVEN THOUGH YOU WERE UNDER THE INFLUENCE OF PCP AT THIS
16 TIME. IT'S YOUR RESPONSIBILITY.

17 SHE MAY NOT NEED ANY COMPENSATION BECAUSE YOU
18 DIDN'T GET AWAY WITH THE PROPERTY AND SHE MAY HAVE ONLY HAD
19 A MINOR INJURY THAT DOESN'T REQUIRE ANY MEDICAL TREATMENT OR
20 COMPENSATION OR SHE MAY NEED COUNSELING AS A RESULT OF THIS
21 AND I MAY ORDER RESTITUTION. BUT THE IMPORTANT THING IS IF
22 YOU DISAGREE WITH THE AMOUNT THAT'S SPECIFIED BY THE
23 AUTHORITIES THAT YOU OWE ON RESTITUTION, YOU HAVE THE RIGHT
24 TO A COURT HEARING ON HOW MUCH YOU WOULD HAVE TO PAY. SO IF
25 THEY'RE ASKING FOR A MILLION DOLLARS YOU CAN COME IN AND SAY
26 I WANT A COURT HEARING ON THAT. DO YOU UNDERSTAND THAT?

27 THE DEFENDANT: YES.

28 THE COURT: MR. KAPP, DO YOU HAVE ANYTHING FOR THE

1 RECORD THAT YOU WOULD LIKE TO ADD, SIR?

2 MR. KAPP: NO THANK YOU, YOUR HONOR.

3 THE COURT: ALL RIGHT. MR. HERNANDEZ, DO YOU HAVE
4 ANY QUESTIONS OF ANYONE HERE ABOUT YOUR RIGHTS OR ABOUT THE
5 SETTLEMENT?

6 THE DEFENDANT: NO.

7 THE COURT: ALL RIGHT. SIR. THEN WITH ALL THE
8 MAXIMUMS AND THE MINIMUMS AND ALL YOUR RIGHTS IN MIND, WHAT
9 IS YOUR PLEA TO THE FELONY CHARGE IN COUNT 3, ON OR ABOUT
10 AUGUST THE 13TH OF LAST YEAR, 1995, THAT YOU POSSESSED PCP,
11 IT'S A FELONY, VIOLATION OF HEALTH AND SAFETY CODE SECTION
12 11377(A) AS CHARGED IN THE INFORMATION, GUILTY OR NOT
13 GUILTY?

14 THE DEFENDANT: GUILTY.

15 THE COURT: AND TO COUNT 4, MISDEMEANOR CHARGE,
16 11550 OF THE HEALTH AND SAFETY CODE, UNDER THE INFLUENCE OF
17 PCP AS CHARGED IN THE INFORMATION ON THE SAME DATE?

18 THE DEFENDANT: GUILTY.

19 THE COURT: IT'S FURTHER ALLEGED THAT PRIOR TO THE
20 COMMISSION OF THE FELONY IN COUNT 3 THAT YOU SUFFERED A
21 STRIKE PRIOR CONVICTION, WITHIN THE MEANING OF 1170.12 AND
22 667(B) THROUGH (I) AND IT WAS FOR BURGLARY OF AN INHABITED
23 DWELLING HOUSE. AND THE DOCKET OUT OF THIS COUNTY IS
24 82270. IS THAT STRIKE CONVICTION AS ALLEGED IN THE
25 INFORMATION IN THOSE TWO DIFFERENT WAYS TRUE AND VALID?

26 THE DEFENDANT: TRUE.

27 THE COURT: IT'S FURTHER ALLEGED THAT YOU SUFFERED
28 ANOTHER STRIKE AND THAT WAS THE ONE THAT WAS TWENTY YEARS

1 AGO IN 1975, THAT YOU SUFFERED ANOTHER STRIKE CONVICTION,
2 WITHIN THE MEANING OF 1170.12 OF THE PENAL CODE AND 667(B)
3 THROUGH (I) OF THE PENAL CODE, AND THAT IS ALSO FOR BURGLARY
4 OF AN INHABITED DWELLING HOUSE AND THE DOCKET OUT OF THIS
5 COUNTY ON THAT CASE IS 61347. APPARENTLY THAT'S THE ONE
6 THAT HAPPENED IN ABOUT 1986 OR SO. IS THAT STRIKE PRIOR
7 TRUE AND VALID AS ALLEGED IN THE INFORMATION?

8 MR. CHADWICK: EXCUSE ME, YOUR HONOR, 1975, THE
9 FIRST ONE. WE'VE CHARGED THEM IN REVERSE CHRONOLOGICAL
10 ORDER.

11 THE COURT: OKAY. THE FIRST ONE YOU ADMITTED WAS
12 1982.

13 MR. KAPP: '82.

14 THE COURT: ALL RIGHT. AND YOU ADMIT THAT THE
15 FIRST CHARGED STRIKE PRIOR IS TRUE AND VALID 82270, IS THAT
16 RIGHT, SIR?

17 THE DEFENDANT: YES.

18 THE COURT: THE SECOND ONE CHARGED IS THE OLDER OF
19 THE TWO AND THAT IS THE ONE THAT'S TWENTY YEARS OLD AND THAT
20 DOCKET IS 61347. THAT ALSO WAS BURGLARY OF AN INHABITED
21 DWELLING HOUSE, WITHIN THE MEANING OF 1170.12 AND 667(B)
22 THROUGH (I) AS ALLEGED HERE IN THE INFORMATION. IS THAT
23 STRIKE PRIOR TRUE AND VALID?

24 THE DEFENDANT: TRUE.

25 THE COURT: OKAY. THE DISTRICT ATTORNEY IS ALSO
26 ASKING THAT YOU ADMIT TWO SERIOUS FELONY PRIORS EVEN THOUGH
27 THEY HAVE NO LEGAL EFFECT HERE.

28 MR. CHADWICK: PEOPLE MOVE TO STRIKE THOSE AT THIS

1 TIME.

2 THE COURT: TAKE THAT MOTION UNDER SUBMISSION.

3 PEOPLE HAVE A MOTION TO STRIKE THE FIRST CHARGED
4 PRISON PRIOR. I'LL TAKE THAT UNDER SUBMISSION.

5 MR. CHADWICK: YES, YOUR HONOR.

6 MR. CHADWICK: UNDER PEOPLE VERSUS JONES.

7 THE COURT: OKAY. SO MR. HERNANDEZ, WE ARE DOWN
8 NOW TO THE THREE REMAINING PRISON PRIORS.

9 IT IS ALLEGED, SIR, THAT YOU SUFFERED A PRISON
10 PRIOR FOR ESCAPE, 4530(B), WITHIN THE MEANING OF 667.5(B) OF
11 THE PENAL CODE AND THAT'S ON DOCKET 87364. I GUESS THAT WAS
12 WHERE YOU FAILED TO RETURN TO A HALFWAY HOUSE OR WORK
13 FURLOUGH FACILITY IN STATE PRISON. IS THAT PRISON PRIOR AS
14 CHARGED IN THE INFORMATION TRUE AND VALID?

15 THE DEFENDANT: TRUE.

16 THE COURT: IT'S NEXT CHARGED THAT YOU SUFFERED
17 ANOTHER PRISON PRIOR FOR POSSESSION FOR SALE -- EXCUSE
18 ME -- SALES OF LSD. THE DOCKET IS 109366 AND THAT IS
19 CHARGED WITHIN THE MEANING OF 667.5(B) OF THE PENAL CODE.
20 IS THAT PRISON PRIOR ALSO TRUE AND VALID?

21 THE DEFENDANT: TRUE.

22 THE COURT: FINALLY, IT'S ALLEGED THAT YOU HAVE
23 ANOTHER PRISON PRIOR, WITHIN THE MEANING OF 667.5(B) OUT OF
24 STANISLAUS COUNTY FOR BURGLARY, DOCKET 270104, AND
25 APPARENTLY THAT'S THE LAST OF YOUR PRISON PRIORS. IS THAT
26 PRISON PRIOR TRUE AND VALID, SIR? MR. HERNANDEZ, IS THAT
27 PRISON PRIOR TRUE AND VALID? THAT CONVICTION WAS IN
28 STANISLAUS COUNTY FOR BURGLARY AS CHARGED?

1 THE DEFENDANT: YES.

2 MR. CHADWICK: YOUR HONOR, PEOPLE ARE MOVING -- TO
3 THE EXTENT IT'S NOT ALREADY CLEAR ON THE RECORD, PEOPLE ARE
4 MOVING TO DISMISS COUNTS 1 AND 2. THE REASONS ARE IN THE
5 INTERESTS OF JUSTICE. BECAUSE OF ALL THE REASONS STATED IN
6 MR. KAPP'S REQUEST FOR DISMISSAL OF THE PRIOR UNDER SECTION
7 1385 AND BECAUSE OF MR. HERNANDEZ' CHANGE OF PLEA TO COUNTS
8 3 AND 4, PEOPLE BELIEVE THAT THE LESSER SENTENCE FROM COUNTS
9 3 AND 4 IS MORE APPROPRIATE IN THIS CASE THAN ALL FOUR
10 COUNTS IN THIS PRETRIAL STAGE RIGHT HERE. SO BECAUSE OF THE
11 RELATIVE LACK OF VIOLENCE AND THE HISTORY AND OTHER REASONS
12 STATED, PEOPLE MOVE TO DISMISS COUNTS 1 AND 2.

13 THE COURT: YOU'RE ASKING ME AT THE TIME OF
14 SENTENCING TO DISMISS THE ROBBERY AND THE PETTY THEFT WITH A
15 PRIOR BECAUSE HE'S ENTERED PLEAS HERE TO THE REMAINING
16 CHARGES AND ADMITTED THREE OF THE PRISON PRIORS AND HE'S
17 ADMITTED BOTH STRIKES.

18 MR. CHADWICK: YES, YOUR HONOR.

19 THE COURT: THAT'S IN THE INTERESTS OF JUSTICE AND
20 FOR THE REASONS STATED BY MR. KAPP WHEN HE WAS ASKING ME TO
21 EITHER REDUCE THE CASE OR TO STRIKE ONE OF THE STRIKES?

22 MR. CHADWICK: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT. I'LL TAKE THAT MOTION
24 UNDER SUBMISSION 'TIL THE DATE OF SENTENCING AS TO MR.
25 HERNANDEZ.

26 NOW, MR. HERNANDEZ, DO YOU HAVE ANY QUESTIONS OF
27 ANYONE HERE, INCLUDING YOUR LAWYER, AS TO THE SETTLEMENT OF
28 THE CASE, TERMS AND CONDITIONS OF THE SETTLEMENT OR ANY OF

1 YOUR RIGHTS? DO YOU HAVE ANY QUESTIONS?

2 THE DEFENDANT: NO.

3 THE COURT: ALL RIGHT. I WILL THEN FIND THAT YOUR
4 PLEA IS FREE AND VOLUNTARY, KNOWING AND INTELLIGENT, AND I
5 WILL ASK COUNSEL IF THEY STIPULATE THAT I CAN FIND A FACTUAL
6 BASIS TO SUPPORT THE PLEA AND THE ADMISSIONS -- LET ME GO
7 BACK.

8 I'LL FIND THAT BOTH YOUR PLEAS AND YOUR ADMISSIONS
9 ARE FREE AND VOLUNTARY, KNOWING AND INTELLIGENT, AND I'LL
10 ASK COUNSEL IF THERE'S A STIPULATION THAT THERE'S A FACTUAL
11 BASIS TO SUPPORT THE PLEAS AND ADMISSIONS IN THE OFFENSE
12 REPORTS, PRELIM TRANSCRIPT AND COURT RECORDS FROM THIS
13 COUNTY AND STANISLAUS COUNTY; MR. KAPP?

14 MR. KAPP: SO STIPULATED.

15 THE COURT: MR. CHADWICK?

16 MR. CHADWICK: SO STIPULATED.

17 THE COURT: I'LL FIND A FACTUAL BASIS BASED ON
18 THAT STIPULATION AND ON THE COURT RECORDS, TAKE JUDICIAL
19 NOTICE OF THE COURT RECORDS.

20 I WILL ORDER A FULL REPORT IN THIS CASE FULL
21 PROBATION REPORT. THEY'LL INTERVIEW YOU AND GIVE YOU A
22 CHANCE TO TELL US YOUR SIDE OF IT, MR. HERNANDEZ, IN MORE
23 DETAIL. I REALLY HAVEN'T TALKED WITH YOU DIRECTLY ABOUT
24 WHAT WAS GOING ON AT THAT TIME BACK IN AUGUST OF LAST YEAR,
25 I WOULD CERTAINLY LIKE TO HEAR YOUR SIDE OF IT, TO BE
26 HONEST.

27 I'M WONDERING, MR. KAPP, DOES HE WANT TO WAIVE
28 TIME FOR SENTENCING OR NOT?

1 MR. KAPP: TIME IS WAIVED FOR SENTENCING, YOUR
2 HONOR. WE ARE PREPARED TO WAIVE A FULL REPORT BUT IF THE
3 COURT WOULD LIKE A FULL REPORT --

4 THE COURT: MR. CHADWICK, WHAT DO YOU THINK?

5 MR. CHADWICK: PEOPLE ARE ASKING FOR A FULL
6 REPORT, YOUR HONOR.

7 THE COURT: I THOUGHT THE PEOPLE MIGHT ASK FOR
8 ONE.

9 I'LL GET A FULL REPORT. I THINK IT'S APPROPRIATE.
10 IT'S A SERIOUS CASE, SERIOUS CHARGE, SERIOUS CONSEQUENCES,
11 AND I WOULD LIKE TO HEAR FROM MR. HERNANDEZ. I STILL HAVE
12 TO FIGURE OUT WHAT TO DO ABOUT THE PRISON PRIORS. I WOULD
13 LIKE TO HEAR HIS SIDE OF IT.

14 YOU HAVE THE RIGHT TO BE SENTENCED WITHIN TWENTY
15 COURT DAYS. YOUR LAWYER TELLS ME YOU WANT TO WAIVE TIME FOR
16 A SHORT PERIOD OF TIME ANYWAY TO ALLOW US TO DO THAT. I WAS
17 THINKING OF MAYBE JUNE THE 5TH OR THE 12TH -- ACTUALLY, NOT
18 THE 12TH BUT MAYBE THE 19TH.

19 MR. KAPP: THAT'S FINE, YOUR HONOR.

20 THE COURT: WHICH ONE?

21 MR. KAPP: THE 19TH IS FINE.

22 THE COURT: JUNE THE 19TH AT 8:30 IN DEPARTMENT 24
23 AT THE HALL OF JUSTICE. DISCUSSIONS, MR. KAPP AND MR.
24 CHADWICK, WILL BE AT 8:30 IN DEPARTMENT 26 ON THE THIRD
25 FLOOR.

26 MR. HERNANDEZ, DO YOU HAVE ANY QUESTIONS?

27 THE DEFENDANT: NO, SIR.

28 THE COURT: OKAY. ARE YOU ALL RIGHT? OKAY.

N^o
TIB

1 SHAKING YOUR HEAD YES. YOU'VE GOT TO SAY SOMETHING HERE ON
2 THE RECORD. SAY YES OR NO. ALL RIGHT. THANK YOU, SIR, FOR
3 SETTling YOUR CASE. I'LL SEE YOU IN JUNE.

4 THE DEFENDANT: ALL RIGHT.

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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA) SS.

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6
7 I, LEANNA J. LANE, DO HEREBY CERTIFY THAT THE
8 FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE
9 PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON MAY
10 14, 1996.

11 THAT, I REPORTED THE SAME IN STENOGRAPHY BEING THE
12 QUALIFIED AND ACTING OFFICIAL COURT REPORTER OF THE SUPERIOR
13 COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF
14 SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER HAD THE
15 SAME TRANSCRIBED INTO TYPEWRITING AS HEREIN APPEARS.

16 DATED THIS 14TH DAY OF MAY, 1996.
17
18

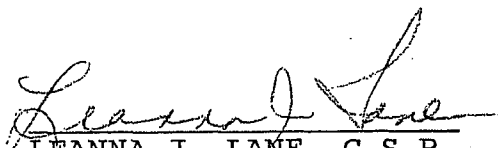

19 
20 LEANNA J. LANE, C.S.R.
21 CERTIFICATE NO. 3337
22
23
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Exhibit "B"



DECLARATION BY PETITIONER

I Victor Hernandez declare under the penalty of perjury:

- (1) That prior to my plea agreement my attorney explained to me that the District Attorney had offered me a plea agreement which would result in me pleading guilty and getting a prison sentence in which I would serve twenty years and get twenty percent off for good behavior.
- (2) When I entered the court room on the record the trial court took my plea and reminded me that I would be getting twenty percent off for good time credits.
- (3) If I had known at the time of the plea that I could not earn goodtime worktime credits I would have not taken the deal.

I declare under the penalty of perjury that the information I have provided is true and correct.

Victor Hernandez

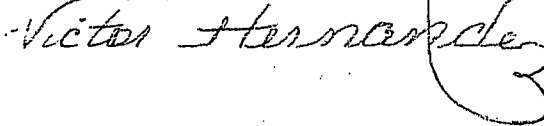


EXHIBIT G

CALIFORNIA APPELLATE COURTS

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Date	Description	Notes
12/13/2006	Petition for a writ of habeas corpus filed.	
01/05/2007	Case fully briefed.	
01/05/2007	Order denying petition filed.	The petition for writ of habeas corpus is denied (P, E, WD)
01/05/2007	Case complete.	
03/07/2007	Record purged - to be shipped to state records center.	

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EXHIBIT H

May. 20. 2008 3:06PM

No. 8942 P. 10

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S150047

CLERK SUPREME COURT

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re VICTOR HERNANDEZ on Habeas Corpus

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998)
18 Cal.4th 770, 780.)

SUPREME COURT
FILED

JUL 11 2007

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

CALIFORNIA APPELLATE COURTS

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HERNANDEZ (VICTOR) ON H.C.

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Case Number S150047

Opinions

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Date	Description	Notes
02/06/2007	Received:	Request for a full investigation.
02/06/2007	Petition for writ of habeas corpus filed	Victor Hernandez, Petitioner Pro per
07/11/2007	Petition for writ of habeas corpus denied	(See In re Robbins (1998) 18 Cal.4th 770, 780.)
07/26/2007	Note: Mail returned (unable to forward)	

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Hernandez v. Yates, Warden**

No.: **C 08-1154 JF (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On June 23, 2008, I served the attached **MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS AS UNTIMELY** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

Victor Hernandez
No. K-31659
Pleasant Valley State Prison
P.O. Box 8504
Fac D-3-128-L
Coalinga, CA 93210

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 23, 2008, at San Francisco, California.

D. Desuyo

Declarant

/s/

D. Desuyo

Signature